

THE NEW
CRIMINAL COURT MANUAL.

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THE
NEW CRIMINAL COURT MANUAL,
CONTAINING
SUCH OF THE ACTS OF
THE SUPREME COUNCIL
AS ARE MOST FREQUENTLY REFERRED TO,
AMONGST WHICH ARE
THE INDIAN PENAL CODE
AND
THE NEW CODE OF CRIMINAL PROCEDURE,
BOTH OF WHICH ARE ANNOTATED WITH
RULINGS OF THE HIGH COURTS IN INDIA.

BY
D. E. CRANENBURGH,
PLEADER.

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P R E F A C E.

THE Criminal Court Manual contains such of the Acts of the Supreme Council as are most frequently referred to.

The Merchant Seamen's Act and the Merchant Shipping Act have been omitted, as a consolidating measure is now before the Supreme Council.

The Indian Penal Code and the new Code of Criminal Procedure, which are printed at the end of the work, are annotated with rulings of the High Courts in India.

D. E. CRANENBURGH.

December 10, 1882.

THE NEW CRIMINAL COURT MANUAL.

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THE NEW CRIMINAL COURT MANUAL.

ACT No. XXIV. OF 1855.

RECEIVED THE G -G.'S ASSENT ON THE 13TH AUGUST 1855.

An Act to substitute penal servitude for the punishment of Transportation in respect of European and American Convicts, and to amend the Law relating to the removal of such Convicts.

WHEREAS, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of transportation, and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment, It is enacted as follows :—

No European or American to be sentenced to transportation.

1. No European or American shall be liable to be sentenced or ordered, by any Court within the territories* under the Government of India, to be transported.

2. Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as herein after mentioned.

The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows ; (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

* See Act XII. of 1876.

Instead of transportation for the term of life, penal servitude for the term of life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation.

3. Provided always that nothing herein contained shall interfere

Discretion of Courts as to alternative punishments. with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation ; but where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

4. If any offender sentenced by any Court within the said territories

Effect of pardon granted upon condition of penal servitude. to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

5, 6, 7. [*Repealed by Act V. of 1871.*]

8. [*Repealed by Act XII. of 1867.*]

9, 10, 11, 12. [*Repealed by Act V. of 1871.*]

13. Nothing in this Act is intended to alter or affect the provisions

Act not to affect the provisions of certain English Statutes. of the 12 & 13 Victoria, chapter 43,* or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

14. Any sentence or order upon any person describing him as a

Sentence when proof that a person is a European or an American. European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

15. The word "European," as used in this Act, shall be understood

Interpretation-clause. to include any person usually designated a European British subject. Words in the singular number or the masculine gender shall be understood to include several persons, as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

* "An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regimental debts and the distribution of effects of officers and soldiers dying in the service," Repealed by 20 & 21 Vic., c. 66.

ACT No. XI. OF 1856.

RECEIVED THE G-G'S ASSENT ON THE 11TH APRIL 1856.

An Act for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty in India.

WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land Forces in the service of Her Majesty in India, and for punishing persons who aid and encourage such deserters; It is enacted as follows —

Preamble.

1. If it shall appear that any officer or soldier being a deserter from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees

Penalty on master in certain cases if a deserter be concealed on board his ship

Proviso.

Provided always that no conviction for such offence as is hereinbefore described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer, and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

Charge may be in the alternative

Jurisdiction.

2 Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act shall be punishable for the same by any Justice of the Peace for any of the presidency towns of Calcutta, Madras, and Bombay, Magistrate or person lawfully exercising the powers of a Magistrate in any port within the territories of the East India Company within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction.

3. No conviction, order, or judgment of any Justice of the Peace, shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds, but the deposi-

Conviction to be quashed on merits only. Form of conviction, &c.

tions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment, shall be aided by what so appears in such depositions.

4. Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate, or other officer having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act. Provided that no proceedings shall have been had against such person in respect of the same offence under this Act.

5. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment, or detachment, at any port or place within the territories of the East India Company, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above-named shall severally under this Act have power to administer ;

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place,

there shall appear reason to suspect that any European officer or soldier belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the East India Company, it shall be lawful for such commanding officer or Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate as aforesaid, to issue a warrant, authorizing the person or persons to whom such warrant may be addressed, to enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law.

6. The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said Forces, or to all constables, peace-officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant.*

* Now a police-officer may, without orders from a Magistrate, and without a warrant, arrest any person reasonably suspected of being a deserter from her Majesty's Army or Her Majesty's Indian Army—see the new Code of Criminal Procedure.

7. Every person who shall be apprehended under any warrant
Persons apprehended how under the 5th section of this Act shall be
to be dealt with, &c brought without delay before a Justice of the
Peace, Magistrate, or person lawfully exercising the powers of a Magis-
trate, in or near the place wherein such person shall have been arrested,
who shall examine such person, and, if he shall be satisfied, either by
the confession of such person or the testimony of one or more witness
or witnesses, or by his own knowledge, that such person is a deserter
from the said Forces, shall cause him to be delivered, together with any
depositions and papers relative to the case, to the commanding officer
of the regiment, corps, or detachment to which he shall belong, if the
same shall be in or near the place of such arrest, or, if otherwise, then
to the commanding officer of the nearest military station, in order that
he may be dealt with according to law

ACT No. XXXVI. OF 1858.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH SEPTEMBER 1858.

*An Act relating to Lunatic Asylums.**

WHEREAS it is expedient to provide for the reception and detention of lunatics in asylums established for that purpose ; It is enacted as follows :—

Preamble

1. The Executive Government of any presidency or place, with the sanction of the Governor-General of India in Council, may establish asylums for the reception and detention of lunatics at such places within the limits of the said Government as may be deemed proper.

Lunatic asylums may be established by Government,

Any such Executive Government may also, if it think fit, grant licenses to any private persons for the establishment of such asylums within the said limits, or may be licensed. and may withdraw such licenses.

2. The management of every lunatic asylum, and the care and custody of its inmates, shall be regulated according to such rules as shall, from time to time, be sanctioned by the Executive Government.

Management of asylums.

The Executive Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer. The inspector of jails (where such office exists) shall be a visitor *ex-officio* of all the asylums within the circle of his inspection.

Appointment of visitors

3. Two or more of the visitors, one of whom shall be a medical officer, shall, once at the least in every month, together inspect every part of the asylum or asylums of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lunatics therein.

Monthly inspection by visitors.

4. It shall be the duty of every *dárogha* or district police-officer to apprehend and send to the Magistrate all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy.

Wandering and dangerous lunatics to be sent to the Magistrate.

Whenever any such person as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a medical officer, shall examine such person, and if the medical officer shall sign a certificate in the form (A) in the schedule to this Act, and the Magistrate shall be satisfied, on personal examination or other proof, that such person is a lunatic, and a proper person

Certificate and order for reception in asylum.

* Declared to extend to the whole of British India, except the Scheduled Districts, by Act XV. of 1874. Founded, to some extent, on 16 & 17 Vic, c. 96.

to be detained under care and treatment, he shall make an order for such lunatic to be received into the asylum established for the division in which the Magistrate's jurisdiction is situate, or, if such lunatic is not a native of the country, and the circumstances of the case so require, into a lunatic asylum at the presidency, and shall send the lunatic in suitable custody to the asylum mentioned in such order.

Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing, to the satisfaction of the Magistrate, that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative.

Provided also that, if any such friend or relative shall desire that the lunatic may be sent to a licensed asylum instead of the public asylum of the division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing, and care of the lunatic in such asylum, the Magistrate may send the lunatic to the licensed asylum mentioned in the engagement.

5 If it shall appear to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction, deemed to be a lunatic, is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly cared for and treated, and, if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month.

If there be no person legally bound to maintain the supposed lunatic, or if the Magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and, upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic, and a proper person to be detained under care and treatment, may make an order for his reception into such asylum as aforesaid.

It shall be the duty of every dārogha or district police-officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge.

6. All acts which the Magistrate is authorized or required to do by the two last preceding sections may be done in the presidency towns by the Commissioner of Police; and all duties which a dārogha or district police-officer is authorized or required to perform may be performed in any of the said towns by an officer of the police-force not below the rank of inspector.

When lunatic may be committed to the care of his friends or relatives,

or sent to licensed asylum.

In case of neglect or cruel treatment, Magistrate any order person bound to maintain lunatic, to provide for his proper treatment.

If no person bound to maintain him, Magistrate may make an order for his reception in asylum

Dārogha to report neglect.

Commissioner of Police, &c., to act in the presidency towns.

7. Except as otherwise hereinbefore provided, no person shall be

Order and certificate for
reception into presidency
asylum.

received into a lunatic asylum in any presidency town without an order under the hand of some person in the form (B) in the schedule to this Act, together with such statement of particulars as is contained in the said form (B); nor unless such person has been found lunatic by inquisition or under an enquiry directed by an order of one of the Courts of Judicature established by Royal Charter, without the medical certificate, containing the particulars in form (A) in the schedule to this Act, of two persons, each of whom shall be a physician or surgeon, and one of whom shall be a presidency surgeon or a surgeon in the employment of the Government.

When such order is presented, the visitors or manager of the asylum, before admitting the lunatic into the asylum, may require the friends of the said lunatic to engage to pay the expenses which may be incurred for the lodging, maintenance, clothing, medicine, and care of the lunatic, unless it shall appear to the said visitors that they have not sufficient means of doing so.

8. Clause 1.—In places other than those specified in the last preced-

Reception in mofassil
asylum

ing section, no person shall be received into a lunatic asylum, except as otherwise hereinbefore provided, without an order of the Civil Court.

Clause 2.—When any person has been adjudged to be a lunatic, and

Application for order to
be made by guardian, if
guardian appointed.

a guardian for such lunatic has been appointed by the Court of Wards or the Collector, or by the Civil Court, if such guardian shall desire that the lunatic be admitted into a lunatic asylum, he shall make application to the Civil Court, and the Judge, with the assistance of a medical officer, shall examine such lunatic, and if the medical officer shall sign a certificate in the form (A) in the schedule to this Act, and the Judge shall be satisfied that the lunatic is a proper person to be detained under care and treatment in a lunatic asylum, he shall make an order for such person to be received into the asylum established for the division in which his jurisdiction is situate, or, if he think fit, into any licensed asylum mentioned in the application.

Clause 3.—If any relative or friend of any person, for whom a

Application where no
guardian appointed.

guardian has not been appointed by the Court of Wards or the Collector or by the Civil Court, desires that such person may be admitted into a lunatic asylum, he may make application to the Civil Court, and the Judge, if he see sufficient reason for so doing, shall enquire into the fact of lunacy in the same manner as if an application had been made to the Civil Court under the provisions of section 3 of Act XXXV. of 1858, entitled 'An Act to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature,' and if the lunacy be established, the Judge may then proceed in the manner prescribed in the second clause of this section.

Clause. 4 — Whenever the Judge shall make an order for the recep-

Order for payment of ex-
penses.

tion of any person into a lunatic asylum, he shall, at the same time, make an order for the

payment of the expenses to be incurred for the lodging, maintenance, clothing, medicine, and care of such person, and such expenses shall be recovered by the Judge on the application of the visitors or manager of

such asylum. Provided, however, that if it shall appear to the satisfaction of the Judge that the

lunatic has not sufficient property, and that no person legally bound to maintain the said lunatic has sufficient means for the payment of such expenses, he shall certify the same in the order for the reception of the lunatic into the asylum, instead of making such order for the payment of expenses as aforesaid.

9. It shall be lawful for three of the visitors of any asylum, of

whom one shall be a medical officer, by writing under their hands, to order the discharge of any person detained in such asylum. When such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer.*

10. When any relative or friend of a lunatic detained in any asylum

under the provisions of section 4, section 5, or section 6 of this Act, is desirous that such lunatic shall be delivered over to his care and custody, he shall make application to the Magistrate or Commissioner of Police under whose order the lunatic is detained,

and the Magistrate or Commissioner of Police, if he think fit, after communication with the visitors or with one of them being a medical officer, and upon the undertaking in writing of such relative or friend to the satisfaction of the said Magistrate or Commissioner that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, shall make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

11. The inspector of jails may direct the removal of any lunatic

from any public asylum to any other public asylum within the circle of his inspection, and such order shall be sufficient authority for the removal of such lunatic, and also for his reception into the asylum to which he is ordered to be removed.

12. If, after the reception of any lunatic into any asylum, it appear

that the order or the medical certificate or certificates upon which he was received is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

13. Every person received into a lunatic asylum under any such

order as is required by this Act, accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such order, be re-taken by the manager of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said manager, or any police-officer, and conveyed to, and received and detained in, such asylum.

* See Act V of 1871, s. 31.

14. When any lunatic is sent to a licensed asylum by order of a Government when to pay Magistrate or Commissioner of Police under for lunatic's maintenance. section 4, section 5, or section 6 of this Act, and when a lunatic is admitted into such asylum under section 7, or an order for the reception of a lunatic is made under section 8, and no engagement has been taken from the friends of the lunatic or order made by the Judge for the payment of expenses under the said section 7 or section 8 respectively, the expense of the lodging, maintenance, clothing, medicine, and care of such lunatic shall be paid by the Government to the manager of such asylum.

15. The Magistrate or Commissioner of Police by whom any lunatic has been sent to a lunatic asylum, if it appear Order for payment of cost of lunatic's maintenance. to such Magistrate or Commissioner that such lunatic has an estate applicable to his maintenance and more than sufficient to maintain his family, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may apply to the chief Civil Court of original jurisdiction within the local jurisdiction of which the estate of the lunatic may be situate, or the person legally bound to maintain him may reside, and such Court shall enquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, shall make an order for the recovery of the charge of the lodging, maintenance, clothing, medicine, and care of such lunatics out of such estate or from such person.

Such order shall be enforced in the same manner, and shall be of Enforcement, &c., of the same force and effect, and subject to the order. the same appeal, as any judgment or order made by the said Court in a regular suit in respect of the property or person therein mentioned.

Any personal property which may be in the possession of a lunatic Property in possession of found wandering at large may be sold by the Magistrate, and the proceeds thereof (or such part of the same as may be necessary) applied towards the payment of the charges of the lodging and maintenance of the lunatic, and of any other expenses incurred on his behalf.

The liability of any relative or person to maintain any lunatic Relatives' liability to shall not be taken away or affected by any provision contained in this Act.

17. Nothing contained in this Act shall be taken to interfere with the power of any of the Courts of Judicature Saving of powers of Supreme Courts. established by Royal Charter over any person found to be lunatic by inquisition or under the provisions of Act XXXIV. of 1858, entitled "*An Act to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*," or with the rights of any committee of the person or estate of such lunatic.

18. The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot.

The word "Magistrate" shall include a person exercising the powers of a Magistrate.

SCHEDULE *

FORM A

CERTIFICATE OF MEDICAL OFFICER (*see sections 4 and 8*)

I, the undersigned, (*here enter name and official designation*), hereby certify that I, on the day of at , personally examined (*here enter name and residence of lunatic*), and that the said is a lunatic (*or an idiot, or a person of unsound mind*) and a proper person to be taken charge of, and detained under care and treatment, and that I have formed this opinion on the following grounds, namely —

1 Facts indicating insanity observed by myself (*here state the facts*)

2 Other facts (if any) indicating insanity communicated to me by others (*here state the information and from whom*)

(Signed)

FORM B

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT (*see section 7*).

I, the undersigned, hereby request you to receive *A B* a lunatic (*or an idiot or a person of unsound mind*) as a patient into your asylum. Subjoined is a statement respecting the said *A B*

(Signed) Name

Occupation (if any)

Place of abode

Degree of relationship (if any), or other circumstance of connexion with the patient

Dated this day of one thousand eight hundred and

To

Superintendent of the Asylum at [*describing the asylum*]

STATEMENT

[*If any of the particulars in this statement be not known the fact to be so stated*]

Name of patient, with Christian name at length

Sex and age

Married, single, or widowed

Condition of life, and previous occupation (if any)

The religious persuasion, as far as known

Previous place of abode

Whether first attack

Age (if known) on first attack

When and where previously under care and treatment

Duration of existing attack

Supposed cause

Whether subject to epilepsy

Whether suicidal

Whether dangerous to others

Whether found lunatic by inquisition or enquiry under order of Court, and date of commission or order for inquisition or enquiry

Whether any member of patient's family has been or is affected with insanity

(Signed) Name

[*Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added, namely,*]

Occupation (if any)

Place of abode

Degree of relationship (if any), or other circumstances of connexion with the patient

* As to the necessity of strictly following the corresponding forms in the English Act, see *Reg. v. Pinder*, 21 L. J., Q. B., 118

ACT No. XIII. of 1859.

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MAY 1859.

*An Act to provide for the punishment of breaches of contract of Artificers, Workmen, and Labourers in certain cases.**

Preamble.

WHEREAS much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several presidency-towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of artificers, workmen, and labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows:—

1. When any artificer, workman, or labourer,† shall have received

Complaint to Magistrate if workman neglect to perform work for which he has received advance.

from any master or employer resident or carrying on business in any presidency-town, or from any person acting on behalf of such master or employer, an advance of money‡ on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen, or labourers, if such artificer, workman, or labourer shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform, or get performed, such work according to the terms of his contract, such master or employer, or any such person as aforesaid, may complain to a Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such artificer, workman, or labourer, and shall hear and determine the case.

2. If it shall be proved to the satisfaction of the Magistrate that

Magistrate may order repayment of advance or performance of contract.

such artificer, workman, or labourer, has received money in advance from the complainant on account of any work, and has wilfully, and without lawful or reasonable excuse, neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such artificer, workman, or labourer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform, or get performed, such work according to the terms of

* Cf. 40 Geo. IV. c. 34.

† The Act does not apply to contracts for domestic or personal service, 3 Beng., A. C. J., 32; and see 4 Beng., App., 1.

‡ See 9. Bom. 171, Reg. v. *Jethya valad Vastya*.

his contract, and if such artificer, workman, or labourer, shall fail to

Penalty if workman fail to comply with order comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months * or if the order be for the repayment of a sum of money, for a term not exceeding three months or until such sum of money shall be sooner repaid, provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy by action or otherwise which he might have had but for this Act

3. When the Magistrate shall order any artificer workman, or la-

Magistrate may require workman to give security for due performance of order labourer to perform, or get performed, any work according to the terms of his contract, he may also, at the request of the complainant, require such artificer, workman, or labourer to enter into a recognizance with sufficient security, for the due performance of the order, and in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months

4 The word "contract," as used in this Act, shall extend to all con-

To what contracts Act extends contracts and agreements, whether by deed or written or verbal, and whether such contract be for a term certain, or for specified work, or otherwise

5 This Act may be extended by the Governor-General of India in

Act may be extended by Council, or by the Executive Government of Government. any presidency or place, to any place within the limits of their respective jurisdictions † In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers

* *Reg v Joma bin Balu*, 4 Bomb, C C, 37 As to civil suit for the advance after imprisonment, 2 Mad 427

† Extended to the Panjab 13th July 1859 to all Collectorates in the Bombay Presidency, *Bombay Govt Gazette*, 1860 p 594 to Sindh *id* 4th December 1873, p 1000 to the District of Nimar, *Calcutta Gazette* 1862, p 2980

ACT No. V. OF 1861

RECEIVED THE G - G 's ASSENT ON THE 22ND MARCH 1861.

An Act for the Regulation of Police.

Preamble WHEREAS it is expedient to re-organize the police, and to make it a more efficient instrument for the prevention and detection of crime, It is enacted as follows —

1. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say —

Interpretation clause The words ‘Magistrate of the District’ shall mean the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled

The word “Magistrate” shall include all persons within the general police district, exercising all or any of the powers of a Magistrate

The word “police” shall include all persons who shall be enrolled under this Act

The words “general police-district” shall embrace any presidency, province, or place, or any part of any presidency, province, or place, in which this Act shall be ordered to take effect

The word “property” shall include any moveable property, money, or valuable security

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number

Words importing the masculine gender shall include females

The word ‘person’ shall include a Company or Corporation

The word “month” shall mean a calendar month

The word “cattle” shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.

2.* The entire police-establishment under a Local Government shall, for the purposes of this Act, be deemed to be one police-force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall, from time to time, be ordered by the Local Government, subject to the sanction of the Governor-General of India in Council.

3. The superintendence of the police throughout a general police-district shall vest in, and, subject to the general control of the Governor-General of India in

* Section 2, so far as it relates to the provinces under the control of the Lieutenant-Governor of Bengal, was repealed by Bengal Act VII. of 1869

Council, shall be exercised by, the Local Government* to which such district is subordinate, and, except as authorized under the provisions of this Act, no person, officer or Court shall be empowered by the Local Government to appoint, supersede, or control any police-functionary.

4 The administration of the police throughout a general police-district shall be vested in an officer to be styled Inspector-General of Police, and in such Deputy Inspectors-General, and Assistant Inspectors-General, as to the Local Government shall seem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the District shall under the general control and direction of such Magistrate be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers above mentioned shall from time to time be appointed by the Local Government, and may be removed by the same authority.

5 The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district but shall exercise those powers subject to such limitation as may, from time to time, be imposed by the Local Government.

6 [*Repealed by Act X of 1857*]

7 The appointment of all police officers other than those mentioned in section 4 of this Act shall under such rules as the Local Government shall from time to time sanction rest with the Inspector-General, Deputy Inspector-General, Assistant Inspectors-General, and District Superintendents of Police who may under such rules as if result at any time dismiss, suspend or reduce any police officer whom they shall think remiss or negligent in the discharge of his duty or unfit for the same or fine any police officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who, by any act of his own shall render himself unfit for the discharge thereof.

8 Every police officer so appointed shall receive, on his appointment a certificate in the form annexed to this Act under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police officer.

Such certificate shall cease to have effect whenever the person named therein is suspended or dismissed or otherwise removed from employment in the police force and shall be immediately surrendered to the superior officer of such person or to some other officer empowered to receive the same.

* The power of a Local Government under this Act (except section 4) has been declared (under Act XXXII of 1867) to the Chief Commissioners of Oudh, the Central Provinces and British Burma & *Act of India* March 7, 1868 p. 368, & June 12 1869 p. 18.

† *H. J. v. Deenath Ganjool*, 8 Beng. App., 53

9 No police-officer shall be at liberty to withdraw himself from the

Police officers not to resign without leave or two months' notice

duties of his office unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

10. No police-officer shall engage in any employment or office what-

Police officers not to engage in other employment by the Inspector-General.

ever, other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

11. [*Repealed by Act XVI of 1874.*]

12. The Inspector-General of Police may, from time to time, sub-

Power of Inspector-General to make rules

ject to the approval of the Local Government, frame such orders and rules as he shall deem expedient relative to the organization, classification, and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them, their inspection, the description of arms, accoutrements and other necessaries to be furnished to them, the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

13. It shall be lawful for the Inspector-General of Police, or any

Additional police officers employed at cost of individuals

Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the District, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application. Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn, and such person shall be relieved from the charge of such additional force from the expiration of such notice.

14. Whenever any railway, canal, or other public work, or any

Appointment of additional force in the neighbourhood of railway and other works.

manufactory or commercial concern, shall be carried on, or be in operation, in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed on such work, manufactory, or concern, it shall be lawful for the

Inspector-General, with the consent of the Local Government to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders from time to time upon the person having the control or custody of the funds used in carrying on such work, manufactory, or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly

15 It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police force in excess of the ordinary fixed complement to be quartered in any part of the general police-district which shall be found to be in a disturbed or dangerous state, or in any part of the general police-district in which from the conduct of the inhabitants, he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force and the Magistrate of the District, after enquiry if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.

16. All monies payable under the last three preceding sections on account of any additional police force employed as therein directed shall be recoverable under the warrant of a Magistrate by distress and sale of the goods of the defaulter within the district of such Magistrate, or by suit in any competent Court, and the monies paid on this account or so recovered shall be credited to a fund to be called "The General Police Fund, and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

17. When it shall appear that any unlawful assembly, or riot, or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly, or riot or disturbance of the peace, has occurred, or is apprehended it shall be lawful for any police-officer not below the rank of inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officer may require to act as special police-officers for such time and within such limits as he shall deem necessary, and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

18. Every special police-officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary officers of police.

19. If any person, being appointed a special police-officer as afore-
 said, shall, without sufficient excuse, neglect or
 Refusal to serve as spe- refuse to serve as such, or to obey such lawful
 cial police-officers. order or direction as may be given to him for the performance of his
 duties, he shall be liable, upon conviction before a Magistrate, to a fine
 not exceeding fifty rupees for every such neglect, refusal, or dis-
 obedience.

20. Police-officers enrolled under this Act shall not exercise any
 Authority to be exercised authority, except the authority provided for a
 by police-officers. police-officer under this Act and any Act which
 shall hereafter be passed for regulating criminal procedure.

21. Nothing in this Act shall affect any hereditary or other village
 police-officer, unless such officer shall be en-
 Village police-officers. rolled as a police-officer under this Act. When
 so enrolled, such officer shall be bound by the provisions of the last
 preceding section. No hereditary or other village police-officer shall
 be enrolled without his consent and the consent of those who have the
 right of nomination.

If any police-officer appointed under Act XX. of 1856 (*to make*
 Police-chaukidárs in the better provision for the appointment and
 Presidency of Fort William. maintenance of Police Chaukidárs in Cities,
Towns, Stations, Suburbs, and Bázárs in the Presidency of Fort
William in Bengal) is employed out of the district for which he shall
 have been appointed under that Act, he shall not be paid out of the
 rates levied under the said Act for that district.

22. Every police-officer shall, for all purposes in this Act contained,
 be considered to be always on duty, and may
 Police-officers always on duty and may be employed at any time be employed as a police-officer in
 in any part of district. any part of the general police-district.

23. It shall be the duty of every police-officer promptly to obey and
 execute all orders and warrants lawfully issued
 Duties of police-officers. to him by any competent authority; to collect
 and communicate intelligence* affecting the public peace; to prevent
 the commission of offences and public nuisances; to detect and bring
 offenders to justice, and to apprehend all persons whom he is legally
 authorized to apprehend, and for whose apprehension sufficient ground
 exists: and it shall be lawful for every police-officer, for any of the
 purposes mentioned in this section, without a warrant, to enter and
 inspect any drinking-shop, gaming-house, or other place of resort of
 loose and disorderly characters.

24. It shall be lawful for any police-officer to lay any information
 before a Magistrate, and to apply for a sum-
 Police-officer may lay in- formation, &c. mons, warrant, search-warrant, or such other
 legal process as may by law issue against any person committing an
 offence.†

Police-officers to take
 charge of unclaimed pro-
 perty, and be subject to
 Magistrate's orders as to
 disposal.

25. It shall be the duty of every police-
 officer to take charge of all unclaimed property,
 and to furnish an inventory thereof to the Ma-
 gistrate of the District.

* See Act XLV. of 1860, s. 177.

† See Act X. of 1882, Sch. I.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the District.

26. The Magistrate of the District may detain the property, and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

27. If no person shall, within the period allowed, claim such property, it may be sold under the orders of the Magistrate of the District, and the proceeds shall be at the disposal of Government.

28. Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate, &c, on ceasing to be police-officers, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

29. Every police-officer* who shall be guilty of any violation of duty, or wilful breach or neglect of any rule or regulation or lawful order made by competent authority; or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months; or who shall engage, without authority, in any employment other than his police-duty; or who shall be guilty of cowardice; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

30. The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

They may also regulate the use of music in the streets on the occasion of festivals and ceremonies.

31. It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, gháts, and landing-places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship during the time

of public worship, and in any case when any road, street, thoroughfare, ghât, or landing-place may be thronged, or may be liable to be obstructed.

32. Every person opposing or not obeying the orders issued under the last two preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

33. Nothing in the last three preceding sections shall be deemed to interfere with the general control of the Magistrate of the District over the matters referred to therein.

34. Any person who, on any road or in any street or thoroughfare within the limits of any town to which this section shall be specially extended by the Local Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely:—

First.—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle:

Second.—Any person who wantonly or cruelly beats, abuses, or tortures any animals:

Third.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public:

Fourth.—Any person who exposes any goods for sale:

Fifth.—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like:

Sixth.—Any person who is found drunk or riotous, or who is incapable of taking care of himself:

Seventh.—Any person who wilfully and indecently exposes his person or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose:

Eighth.—Any person who neglects to fence in, or duly to protect, any well, tank, or other dangerous place or structure.
Neglect to protect dangerous places.

35. *Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.
Proviso.

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act.
Power to prosecute under other law not affected.

Provided that no person shall be punished twice for the same offence.
Proviso.

37. All forfeitures or penalties imposed under the authority of this Act for offences punishable by a Magistrate may, in case of non-payment thereof, be levied by distress and sale of the property of the offender within the limits of the jurisdiction of the Magistrate of the District, by warrant under the hand of the Magistrate who made the order.
Levy of forfeitures and penalties by distress.

38. In case any such forfeiture or penalty shall not be forthwith paid, the Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of the Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.
Procedure until return is made to warrant of distress.

39. If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the Magistrate, by the confession of the offender or otherwise, that he has not sufficient property whereupon such fine or sum of money could be levied if a warrant of distress were issued, the Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of the Magistrate, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.
Imprisonment if distress not sufficient.

40. If the offender be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.
Levy of fines from European British subjects.

41. All sums paid for the service of process by police-officers, and Rewards* to police and informers payable to general police fund. all rewards, forfeitures, and penalties, or shares of rewards, forfeitures, and penalties, which by law are payable to informers, shall, when the information is laid by a police-officer, be paid into the general police fund.*

42. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or Limitation of action. under the general police-powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise;† and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action.

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

43. When any action or prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate; and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine.

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

44. It shall be the duty of every officer in charge of a police-station Police-officers to keep to keep a general diary in such form as shall from time to time be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the

* See s. 16, *supra*.

† So much of this section as relates to the limitation of suits was repealed by Act IX. of 1871, s. 2.

offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the District shall be at liberty to call for and inspect such diary.

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

46. This Act shall not take effect in any presidency, province, or place, unless the same shall be extended to such presidency, province, or place by the Governor-General of India in Council by an order to be published in the Government Gazette.

When the Act shall have been so extended, it shall be carried into effect in such presidency, province, or place as the Local Government, by an order to be published in the official Gazette, shall direct.

47. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the District over any village-watchman or other village police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the District, by the District Superintendent of Police.

ACT No. XVI. OF 1861.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH JULY 1861.

*An Act for licensing and regulating Stage Carriages.**

WHEREAS it is expedient to license and to regulate stage-carriages in British India; It is enacted as follows:—

1. Every carriage drawn by one or more horses† which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India, shall, without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of this Act :

Provided that this Act shall not apply to carriages not ordinarily used for journeys of a greater distance than twenty miles.

2. No carriage shall be used as stage-carriage unless licensed by a Magistrate† or by the Chief Commissioner of Police of a presidency town.

3. The Magistrate or Chief Commissioner of Police to whom the application for a license of a stage-carriage is made may refuse to license the same, if he shall be of opinion that such stage-carriage is unserviceable or is unsafe or unfit for public accommodation or use.

If a Magistrate or Chief Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the stage-carriage, the place at which his head-office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed.

4. For every such license there shall be paid by the proprietor of the stage-carriage the sum of five rupees, and such license shall be in force for one year from the date thereof.

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the license for the name of the former proprietor without any further payment for that year, and every person who appears by the license to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act.

* See 2 & 3 Wm. IV., c. 120; 3 & 4 Wm. IV., c. 48; 5 & 6 Vic., c. 79; 10 & 11 Vic., c. 42; 11 & 12 Vic., c. 118, s. 2. Act XVI. of 1861 applies to the whole of British India, but not so as to supersede or contravene the provisions of any local law dealing with the same subject (see Act XVI. of 1876, s. 2). Bombay Act VI. of 1863 is the enactment which regulates public conveyances in the town of Bombay.

† See s. 21, *infra*.

5. On any stage-carriage being licensed, the proprietor thereof shall cause the number of the license and all the other particulars of the license to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage.

Particulars to be painted on conspicuous part of carriage.

6. The proprietor of any licensed stage-carriage who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in the last preceding section, shall be liable to a fine not exceeding one hundred rupees.

Penalty for letting carriage without having particulars painted.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction to a fine which may extend to five hundred rupees.

Penalty for letting for hire unlicensed carriage.

8. Any proprietor, or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses, or who knowingly permits a larger number of passengers, or a greater weight of luggage, to be carried by such stage-carriage than shall be provided by the license, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction to a fine which may extend to five hundred rupees.

Penalty for allowing carriage to be drawn by fewer animals, or more passengers, &c., to be carried, than provided by license.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage than shall be provided by the license, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution and had made reasonable provision to prevent the commission of the offence.

9. Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused, or tortured, any horse employed in drawing or harnessed to any stage-carriage, or who shall harness to or drive in any stage-carriage any horse which, from sickness, age, wounds, or other cause, is unfit to be driven in such stage-carriage, shall, for every such offence, be liable to a fine not exceeding one hundred rupees.

Penalty for ill-treating animals.

10. Any Magistrate or Chief Commissioner of Police within the local limits of whose jurisdiction any stage-carriage shall ply, or who has granted the license of any stage-carriage, may cancel the license of such stage-carriage if it shall appear to him that such stage-carriage or any horse or any harness used with such carriage is unserviceable or unsafe or otherwise unfit for public accommodation or use.

Revocation of license.

11. In any station or place in which a Magistrate shall reside and be, any police-officer may, in any place within two miles of the office of such Magistrate, seize any stage-carriage with the horse harnessed thereto, if the full particulars of the license of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act.

Such carriage, with the horse harnessed thereto, shall be taken without delay by such police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such police-officer; and if thereupon any fine is imposed by such Magistrate, and such fine is paid, such stage-carriage and horse shall be immediately released; and if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof; and if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale; and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse; and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

12. If any driver of any stage-carriage, or any other person having the care thereof, shall, through intoxication, neglect, or by wanton or furious driving, or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

13. Whenever the driver of any stage-carriage or the owner of any horse employed in drawing any stage-carriage shall have committed any offence against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8, and such driver or owner shall not be known, or, being known, cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed.

Provided that if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard, by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in

his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found.

14. Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may transmit such summons by letter-post, which shall be deemed to be good service thereof.

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

15. All penalties incurred under this Act shall be adjudged by a Magistrate or Chief Commissioner of Police as aforesaid, and all orders made under this Act by such Magistrate or Chief Commissioner of Police shall be final.

16. All penalties imposed under this Act, or any balance of any fine, costs, or charges as mentioned in section 11 of this Act, may, in case of non-payment or non-recovery thereof, be levied by distress and sale of the moveable property of the offender by warrant under the hand of the Magistrate who imposed the same.

17. In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

18. If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

19. If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

20. On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

21. The term "Magistrate" in this Act shall include all Magistrates and other persons exercising the powers of a Magistrate :

The term "British India" in this Act shall denote the territories that are or shall be vested in Her Majesty by the Statute 21 & 22 Vic., c. 106, entitled "An Act for the better Government of India :"

All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India.*

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Words importing the masculine gender shall include the feminine.

* See Act XVI. of 1876, s. 1.

ACT No. III. OF 1864.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH FEBRUARY 1864.

*An Act to give the Government certain powers with respect to Foreigners.**

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government; It is enacted as follows :—

Preamble.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say :—

Interpretation-clause.

The words "British India" shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria, chap. 106, entitled "An Act for the better Government of India :"

The words "Local Government" shall denote the persons authorized to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor-General of India in Council, when such chief executive officer shall, by an order of the Governor-General of India in Council published in the *Gazette of India*, be authorized to exercise the powers vested by this Act in a Local Government :

The word "foreigner" shall denote a person, not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 & 4 William IV., chap. 85, section 81, or a native of British India :

The words "the Magistrate of the District", shall denote the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure :

The word "vessel" shall include any thing made for the conveyance by water of human beings or property :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Words importing the masculine gender shall include females.

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

2. If a question shall arise whether any person alleged to be a foreigner, and to be subject to the provisions of this Act, is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

3. The Governor-General of India in Council may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order ;
 and any Local Government may, by writing, make the like order with reference to any foreigner within the jurisdiction of such Government.

4. If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do ; or

Foreigner refusing to remove, or returning without license after removal, may be apprehended and detained.

if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor-General of India in Council or by the Local Government under whose order he shall have removed himself or been removed,

such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor-General of India in Council, or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor-General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the Allies of Her Majesty, and of the neighbouring Princes and States.

5. Whenever the Governor-General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor-General of India in Council, by a notification published in the *Gazette of India*, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared ; and thereupon, and for such period, the whole of this Act, including this and the subsequent sections, shall have full force and effect in British India or such part thereof as shall have been so specified.

The Governor-General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein.

Proviso.

Provided that none of the provisions of this or the subsequent sections of this Act shall extend

to any foreign minister duly accredited by his Government ;
to any consul or vice-consul ;
to any person under the age of fourteen years ; or
to any person in the service of Her Majesty.

6. Every foreigner, on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall, if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the District, or to such other officer as shall be appointed to receive such reports, by the Governor-General of India in Council or by the Local Government of such place.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place.

The report shall be recorded by the officer to whom it is made.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein ;

but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

11. Licenses under this Act may be granted by the Governor-General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government, as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor-General of India in Council, or by any of the Local Governments.

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

13. The license may be granted subject to such conditions as the Governor-General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary.

Any license may be revoked at any time by the Governor-General of India in Council, or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force, and in which the foreigner holding the same may be, or by the officer who granted the license.

14. If any foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of Government whilst on duty, or by any police-officer.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate, and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the District.

Whenever any person shall be apprehended by or taken before the Magistrate of the District, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or, pending the orders of such Government, to be detained.

16. Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the District, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

17. The Local Government of any part of British India in which all the provisions of this Act are for the time being in force, may order any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India by sea or by such other route as the said Local Government may direct; or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit.

The Governor-General of India in Council may exercise all the powers given by this section to any Local Government.

18. The Governor-General of India in Council may by order prohibit any person, or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV., chap. 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may for the time being be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order ;

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the District, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner ; and the Governor-General of India in Council may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

19. The Local Government of any presidency or place in which all the provisions of this Act may for the time being be in force, may by order prohibit any person, or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV., chap. 85, section 81, from travelling in or passing through such presidency or place or any part thereof, and from passing from any part thereof to another, without a license to be granted by such officer or officers as shall be specified in the order ;

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the District, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner ;

and the Local Government may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the District, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may for the time being be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel ;

and it shall be lawful for such Commissioner of Police, Magistrate, or other officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose ;

and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid.

If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

21. If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the District or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

24. All fines imposed under this Act may, according as they shall have been imposed for offences committed within or for offences committed beyond the limits of the towns of Calcutta, Madras, and Bombay, be recovered by a Magistrate of Police or by the Magistrate of the District in the manner prescribed in section 26 of Act XLVIII. of 1860* (*to amend Act XIII.*

* Repealed, as to Calcutta, by Bengal Act IV. of 1866; as to Madras, by Madras Act VIII. of 1867. Sec. 26 of Act XLVIII. of 1860 is as follows :—

"All fines and penalties imposed by a Magistrate of Police under the authority of this Act, or of any other Act heretofore passed, or which shall hereafter be passed, if no other means for enforcing the payment of such fines and penalties are or shall be provided by such Act, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant of the Magistrate. When a warrant of distress is issued, the Magistrate may order the offender to be detained and kept in safe custody, until return can be conveniently made to such warrant, unless the offender

*of 1856, for regulating the Police of the Towns of Calcutta, Madras, and Bombay.**

25. The Governor-General of India in Council, or the Local Government of any part of British India in which this Act may for the time being be in force, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption.

enter into a recognizance, with or without sureties, conditioned for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such recognizance; but if, before issuing such warrant of distress, it shall appear to the Magistrate, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such Magistrate whereon to levy such fine or penalty, he may, if he think fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and, upon the return thereof, such insufficiency as aforesaid shall be made to appear to the Magistrate, he shall, by warrant, commit the offender to jail, there to be imprisoned, with or without hard labour, for any term not exceeding two months where the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months where the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount."

* See Act XII. of 1876.

ACT No. VI. of 1864.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH FEBRUARY 1864.

*An Act to authorize the punishment of whipping in certain cases.**

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted to follows:—

Preamble.

Whipping added to punishments described in section 53 of Penal Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

1. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

2. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code, that is to say:—

(1.) Theft as defined in section 378 of the said Code.

(2.) Theft in a building, tent, or vessel, as defined in section 380 of the said Code.

(3.) Theft by a clerk or servant, as defined in section 381 of the said Code.

(4.) Theft after preparation for causing death or hurt, as defined in section 382 of the said Code.

(5.) Extortion by threat, as defined in section 388 of the said Code.

(6.) Putting a person in fear of accusation in order to commit extortion, as defined in section 389 of the said Code.

(7.) Dishonestly receiving stolen property, as defined in section 411 of the said Code.

(8.) Dishonestly receiving property stolen in the commission of a dacoity, as defined in section 412 of the said Code.

(9.) Lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

(10.) Lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874. "I think that the Indian Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act [VI. of 1864] formed a part of the Penal Code from the date of its enactment," per Norman, C. J., 7 Beng. 169. See, too, 5 Mad. Rulings, XVIII.

3. Whoever,* having been previously convicted of any one of the offences specified in the last preceding section, shall again be convicted of the same offence, may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence be liable under the Indian Penal Code.†

4. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same‡ offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code, that is to say :—

(1.) Giving or fabricating false evidence in such manner as to be punishable under section 193 of the Indian Penal Code.

(2.) Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in section 194 of the said Code.

(3.) Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in section 195 of the said Code.

(4.) Falsely charging any person with having committed an unnatural offence, as defined in sections 211 and 377 of the said Code.

(5.) Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in section 354 of the said Code.

(6.) Rape, as defined in section 375 of the said Code.

(7.) Unnatural offences, as defined in section 377 of the said Code.

(8.) Robbery or dacoity, as defined in sections 390 and 391 of the said Code.

(9.) Attempting to commit robbery, as defined in section 393 of the said Code.

(10.) Voluntarily causing hurt in committing robbery, as defined in section 394 of the said Code.

(11.) Habitually receiving or dealing in stolen property, as defined in section 413 of the said Code.

(12.) Forgery, as defined in section 463 of the said Code.

(13.) Forgery of a document, as defined in section 466 of the said Code.

(14.) Forgery of a document, as defined in section 467 of the said Code.

(15.) Forgery for the purpose of cheating, as defined in section 468 of the said Code.

(16.) Forgery for the purpose of harming the reputation of any person, as defined in section 469 of the said Code.

(17.) Lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

* Whether a juvenile or an adult offender, 7 Bom., Cr. Ca., 70.

† The Bombay High Court has held that this section does not apply when the second conviction is for an offence committed previously to the first conviction, 3 Bom., Cr. Ca., 38; 7 *ibid.*, 71.

‡ 4 Bom., Cr. Ca., 5.

(18.) Lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

5. Any juvenile offender* who commits any offence which is not by the India Penal Code punishable with death may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

6. Whenever any Local Government shall, by notification in the official Gazette, have declared the provisions of this section to be in force in any frontier-district or any wild tract of country within the jurisdiction of such Local Government, any person who shall, in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

7. [*Repealed by Act X. of 1882.*]

* i. e., a person under the age of 16 years, 8 Bomb., Cr. Ca., 9.

ACT No. XIV. OF 1866.

RECEIVED THE G.-G.'S ASSENT ON THE 23RD MARCH 1866.

An Act to amend the law for the management of the Post Office, for the regulation of the Duties of Postage, and for the punishment of offences against the Post Office :—

WHEREAS it is expedient to amend the law for the management of the post-office, for the regulation of the duties of postage, and for the punishment of offences against the post-office ; It is enacted as follows :—

Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Post Office Act, 1866."

Interpretation-clause.

2. In this Act—unless there be something repugnant in the subject or context—

"Criminal Court" includes every Judge, Magistrate, Justice of the Peace, or Police Magistrate lawfully exercising jurisdiction in criminal cases :

"Fine" includes a penalty or forfeiture, or a sum of money due upon a forfeited recognizance :

"Clubbed packet" shall be taken to mean a packet containing a collection of letters, not made by an agent of the post-office, transmitted through the post-office with the view of the enclosed letters being delivered to more than one person through the agent of the person by whom the packet was made up :

"Newspaper" shall include any periodical publication, published at regular intervals not exceeding thirty-one days :

"Mails" shall include any letter, parcel, or other article conveyed under the provisions of this Act, as well as any box, bag, or other article, or any carriage, horse, messenger, or other person employed or used by the post-office for the conveyance or safe custody of the mails ; and

"British India" includes the territories which are now or shall be vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (An Act for the better Government of India).

3. [*Repealed by Act XIV. of 1870.*]

4. References to any section of Act No. XVII. of 1854, made in any Act passed subsequent thereto, shall be read as if made to the corresponding section of this Act.

References to Act XVII., 1854, read as to this Act.

5. Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the said Government shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and

Exclusive privilege of carrying letters vested in Government of India.

shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching, and delivering all letters, except in the following cases, that is to say—

(1) letters sent by a private friend in his way, journey, or travel, so as such letters be delivered by such friend to the person to whom they shall be directed, without hire, reward, or other profit or advantage for receiving, carrying, or delivering the same :

(2) letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose :

(3) letters solely concerning goods or other property sent either by sea or land to be delivered with the goods or property which such letters concern, without hire, reward, or other profit or advantage for receiving, carrying, or delivering such letters.

But nothing herein contained shall authorize any person to make a

Bar to collection of ex-
cepted letters.

collection of such excepted letters for the purpose of sending them in the manner hereby authorized.

6. Wheresoever, within British India, posts or postal communica-

Persons expressly forbid-
den to collect, carry, or de-
liver letters.

tions are or shall be established by the Govern-
ment of India, the following persons are ex-
pressly forbidden to collect, carry, tender, or

deliver any letter or letters, or to receive any letter for the purpose of carrying or delivering the same, although they shall not receive hire or reward for so doing, that is to say—

(1) common carriers of passengers or goods, and their drivers, servants, or agents, except letters solely concerning goods in their carriages :

(2) owners and commanders of ships, steam-boats, or other vessels passing on any river or canal, or to or from any port in British India, and their servants or agents, except letters solely concerning goods on board.

7. For carrying on the service of the post-office, it shall be lawful

Appointment of officers
for service of post-office.

for the Governor-General of India in Council to appoint or to authorize the appointment of such officers, with such official styles or designations, and to invest them with, and delegate to them, such powers, not inconsistent with the provisions of this Act, as the said Governor-General of India in Council may from time to time deem expedient.

PART II.

POSTAGE RATES.

8. Wheresoever posts or postal communications are or shall be

Postage-rates on letters.

established by the Government of India, postage, if pre-paid by a stamp or stamps as hereinafter provided, shall be charged by weight on letters transmitted by the letter-post by land, according to the following scale :—

On every letter not exceeding a quarter of a tolah in weight,—six pie :

On every letter exceeding a quarter of a tolah and not exceeding half a tolah in weight,—one auna :

On every letter exceeding half a tolah and not exceeding one tolah in weight,—two annas :

And for every half tolah in weight above one tolah, one additional anna ; and every fraction of half a tolah above one tolah shall be charged as one additional half tolah.

Every article transmitted by the letter-post shall be deemed a letter within the meaning of this section, unless it be an article on which a different rate of postage shall be chargeable under this Act.

9. Wheresoever posts or postal communications are or shall be established by the Government of India, postage on newspapers, transmitted by the letter-post by land, shall be charged by weight according to the following scale:—

On every newspaper not exceeding ten tolahs in weight,—one anna.

On every newspaper exceeding ten tolahs and not exceeding twenty tolahs in weight,—two annas :

And for every ten tolahs in weight above twenty tolahs, one additional anna ; and every fraction of ten tolahs shall be charged as ten additional tolahs.

An extra or supplement to any newspaper, bearing the same date as the newspaper, and transmitted therewith under the same cover, shall be deemed part of the newspaper.

Nothing contained in this Act shall be construed to oblige any person to send any newspaper through the post-office, but it shall be lawful for all persons to send the same in any other manner.

10. A newspaper shall not be sent by the letter-post at the rates prescribed in the last preceding section, unless the following conditions be observed, that is to say—

(1) it shall be without a cover, or in a short cover open at both ends :

(2) there shall be no word printed on such newspaper after its publication, or upon the cover thereof, nor any writing or mark upon it, or upon the cover of it, except the name and address of the person to whom it is sent, and the name and address of the sender :

(3) there shall be no paper or thing enclosed in or with any such newspaper.

11. Any newspaper sent by the letter-post in respect of which the above conditions shall not be observed shall, together with any thing enclosed in or with the same, be charged with postage at the rate which would be charged on an unstamped letter of equal weight.

12. Proof-sheets marked as such may be sent by the letter-post at the rates prescribed for newspapers, provided the contents be correctly certified on the cover by the signature in full of the sender ; otherwise the same shall be charged with postage at the rate which would be charged on an unstamped letter of equal weight.

13. Subject to such rules and conditions as the Governor-General of India in Council may from time to time direct,* books, packets of newspapers, and other articles, provided the postage thereon be pre-paid by means of a proper stamp or stamps to be affixed thereon as hereinafter provided, shall be charged with the following rates of postage, without reference to the distance to which they may be carried :—

If not exceeding ten tolahs in weight,—one anna :

If exceeding ten tolahs and not exceeding twenty tolahs in weight,—two annas :

And for every ten tolahs in weight above twenty tolahs, one additional anna ; and every fraction of ten tolahs shall be charged as ten additional tolahs.

If the postage chargeable on any such book or other article be not pre-paid as aforesaid, it shall be subject to the rate of postage prescribed for banghy-parcels in section 14 of this Act.

14. Inland postage shall be charged by weight and distance, on Inland banghy-postage. parcels sent by the banghy-post, according to the following scale :

* See Financial Department Notification, No. 1445, dated 28th February 1873, *Gazette of India*, 1st March 1873, Part I., p. 192.

FOR DISTANCES.		IF NOT EXCEEDING IN WEIGHT								
		20 Tolabs.	50 Tolabs.	100 Tolabs.	200 Tolabs.	300 Tolabs.	400 Tolabs.	500 Tolabs.	600 Tolabs.	
	Miles.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	
Not exceeding	...	300	0 4	0 8	0 12	1 8	2 4	3 0	3 12	4 8
Not exceeding	...	600	0 8	1 0	1 8	3 0	4 8	6 0	7 8	9 0
Not exceeding	...	900	0 12	1 8	2 4	4 8	6 12	9 0	11 4	13 8
Not exceeding	...	1,200	1 0	2 0	3 0	6 0	9 0	12 0	15 0	18 0
Exceeding	1,200	1 4	2 8	3 12	7 8	11 4	15 0	18 12	22 8

Provided that not more than one letter shall be enclosed in a banghy-parcel, under a penalty not exceeding fifty rupees.

15. Banghy-postage, when chargeable by distance under section 14 of this Act, shall be calculated and charged according to such table of distances as shall be authorized from time to time for that purpose by the Governor-General of India in Council.

And it shall be lawful for the Governor-General of India in Council to declare that the distances from or to post-offices not entered in such table shall, for the purposes of this Act, be regarded as represented by the distances shown in the table from or to the post-offices nearest to them respectively.

Each Post-Master-General shall prepare from the aforesaid table, in the English and vernacular languages, for the use of every post-office under his control, a list of all the other post-offices in India, arranged alphabetically, and showing the distance of each of them from the post-office for the use of which it is made, and such list shall be affixed in some conspicuous place in such post-office.

16. Where there is no banghy-post established on any line of road, parcels, books, and other articles shall be received and transmitted by the letter-post, and shall be charged with postage according to the scale in section 13 or 14 of this Act, as the case may be, if it be certified in writing, on such parcel, book-packet, or other article under the full signature and address of the sender, that it does not contain any letter or other written communication on which a higher rate of postage is chargeable under any section of this Act.

If any such certificate be false, any such letter or other written communication contained in such certified parcel, book-packet, or other article, shall be charged with letter-postage as if sent separately, and the sender shall be subject to the penalty hereinafter provided.

17. All book-packets and parcels not exceeding ten tolahs in weight, When book-packets and parcels to go by letter-post. sent through the post-office, shall be conveyed by letter-post, and be charged with letter-postage, unless specially directed to be sent by banghy or book-packet post.

18. On all parcels chargeable under section 14 of this Act with banghy-postage according to distance when conveyed by land, ship-postage shall be charged when they are conveyed by means of Her Majesty's Indian post by sea, according to the following scale, that is to say—

(On every parcel not exceeding twenty tolahs in weight,—two annas :

On every parcel exceeding twenty tolahs, but not exceeding forty tolahs in weight,—four annas :

On every parcel exceeding forty tolahs, but not exceeding one hundred tolahs in weight,—eight annas :

And for every hundred tolahs in weight above one hundred tolahs,—eight additional annas.

Every fraction of one hundred tolahs above one hundred tolahs shall be charged as one hundred additional tolahs ; and if such parcel be

conveyed by Her Majesty's Indian post, partly by land and partly by sea, ship-postage shall be charged in addition to inland banghy-postage.

19. It shall be lawful for the Governor-General of India in Council
Governor-General may at any time to direct that all or any letters or direct pre-payment of postage in all cases. other articles shall not be forwarded by post, unless the postage thereof shall be fully pre-paid by means of a proper stamp or stamps; or that on all or any letters or other articles on which the postage shall not be fully pre-paid by a stamp or stamps, or otherwise, as the said Governor-General in Council shall direct, there shall be charged such higher rates of postage as from time to time may be deemed expedient, not exceeding double the rates of postage hereinbefore specified.*

20. It shall be lawful for the Governor-General of India in Council
Governor-General may from time to time to authorize the levy of post-alter postage-rates. age at rates different from those prescribed in this Act, provided that no increase be made in any particular of the rates prescribed in sections 8 and 9 of this Act.†

21. It shall be lawful for the Governor-General of India in Council
Governor-General may from time to time to direct that postage-duties, fix rates of steam-postage. different from the rates authorized by this Act, shall be chargeable on letters or other articles to be specified in such order, sent through the post from or to any part of Great Britain, or any British colony, or any foreign country to or from any places in British India.‡

The postage charged on any letter or other article specified in any Order of Council made under this section, whether under the name of steam-postage or any other denomination, shall, after the rates of such postage have been published in the official gazette of any presidency, be recovered in the same manner as postage under this Act.

22. It shall be lawful for the Governor-General of India in Council
Governor-General may fix postage-rates for articles sent wholly or partly by sea. to fix, from time to time, rates of postage to be levied on all letters or other articles transmitted by post, by sea, or partly by sea and partly by land, from one part or place in India to another.*

It shall not be necessary that such rates be uniform; but they may vary according to the conveyance or route by which such letters or other articles shall be sent.

* See Notifications No. 189, dated 21st April 1866, and No. 3415, dated 25th October 1867, *Gazette of India*, 21st April 1866, p. 662; 26th October 1867, p. 1161.

† See Financial Department Notifications No. 163, dated 7th January 1869, *Gazette of India*, 9th January 1869, p. 38; No. 2756, dated 26th November 1869, *Gazette of India*, 27th November 1869, Part I., p. 477; No. 957, dated 2nd June 1871, *Gazette of India*, 3rd June, 1871, Part I., p. 414.

‡ See, as to correspondence sent to, or received from, countries or ports in Asia, Financial Department Notification, No. 2868, dated 7th October 1868, *Gazette of India*, 10th October 1868, p. 1505. As to correspondence with Germany, France, and Italy, No. 5546, dated 11th September 1874, *Gazette of India*, 12th September 1874, Part I., p. 461, Nos. 258 and 259, dated 16th April 1875, *Gazette of India*, 17th April 1875, Part I., pp. 179, 181. As to re-directed newspapers, Financial Department Notification No. 614, dated 25th January 1872, *Gazette of India*, 27th January 1872, Part I., p. 116.

23. It shall be lawful for the Governor-General of India in Council from time to time to fix and order any rate of postage to be charged for the conveyance of letters or other articles by express, in addition to or instead of any other rates of postage chargeable on such letters and articles under this Act.

24. On every letter or other article which shall be re-directed at any post-office or forwarded by post from any place to which it shall have been conveyed by post, there shall be charged for the postage thereof from the place at which the same shall be re-directed, or from which it shall be forwarded, in addition to all other postage paid or due thereon, the rate of postage to which it would be liable if posted and pre-paid by stamp at the place where it shall be re-directed, or from which it shall be forwarded.

PART III.

REGISTERED LETTERS.

25. Any person posting a letter or other article shall be entitled to require that it shall be registered at the receiving post-office, and that a receipt shall be granted for such registered letter or article ;

and it shall be lawful for the Governor-General of India in Council to direct that, in addition to any rates of postage payable under this Act, a fee not exceeding four annas shall be charged on any letter or other article which the sender thereof shall require to be so registered, and such registration-fee shall be paid by means of a stamp or stamps affixed to the letter or other article.

26. It shall be lawful for the Governor-General of India in Council from time to time by order to declare in what cases registration shall be compulsory,* and to direct that a double registration-fee shall be levied on the delivery of any letter or other article which ought, under the order of the Governor-General in Council, to have been registered at the time of posting, on which the registration-fee shall not have been pre-paid as directed in section 25.

* "In exercise of the powers conferred by section 26 of the Indian Post-office Act, 1866, the Governor-General in Council is pleased to declare and direct as follows:—

1. If a cover posted at any Indian post-office and addressed to any place in India contains coin or a currency-note or any portion thereof, or manifestly contains postage or other stamps or labels, or a cheque, hundi, bank-note, bank-post bill, bill of exchange, or the like, the registration thereof under section 25 of the said Act shall be compulsory.
2. A double registration-fee shall be levied on the delivery of any cover which ought under this order to have been registered at the time of posting, and on which the registration-fee shall not have been pre-paid as directed in section 25 of the said Act.

Nothing in this order necessitates the registration of any cover containing postage or other stamps or labels, a cheque, hundi, bank-note, and the like, unless the contents thereof are either superscribed upon the cover, or are known or manifest to the officers of the Post-Office Department, owing to the transparency, insecurity, or insufficiency of the cover, or to any other cause." Financial Department Notification, No. 2012, dated 16th August 1872, *Gazette of India*, 17th August 1872, Part I., p. 782.

PART IV.

REDELIVERED, UNPAID, UNCLAIMED, AND REFUSED LETTERS.

27. No person having delivered into any post-office any letter or other article shall be entitled to recall the same; but nothing in this section shall prevent the redelivery of any letter or other article to the sender thereof, subject to such rules and regulations, if any, as the Governor-General of India in Council may, from time to time, prescribe in that behalf.

28. The person to whom any letter or other article, the postage of which has not been paid, shall be delivered, shall not be bound to pay the postage if he forthwith return the same unopened; but if he open the same, he shall be bound to pay the postage due thereon.

If he forthwith return the same unopened, the sender of the letter or other article shall be bound to pay the postage thereof.

If any person shall refuse to pay any postage which he is legally bound to pay for any letter or other article, the same may be recovered for the use of the Secretary of State for India by any Post-Master-General, or by any officer in charge of a post-office by order of a Post-Master-General, in the same manner as a fine may be recovered under this Act;

and it shall be lawful for the officer in charge of any post-office to withhold from the person so refusing, until such postage be paid, any other letter or other article addressed to that person, not being on Her Majesty's service.

Provided always, that if a letter or other article shall appear to the satisfaction of the Post-Master of the office of delivery to have been maliciously sent for the purpose of annoying the person to whom it is addressed, the Post-Master of the delivery-office may remit the postage.

29. Clause 1.—A list of all letters and other articles posted and addressed to persons who cannot be found shall be prepared daily in every post-office, and exposed for not less than two weeks in the most conspicuous part of such office;

and all such letters and other articles which shall have remained three weeks unclaimed in any office shall, if the sender's name and address are written on the cover, be returned to the posting-office to be delivered to the sender free of all charge.

All letters and other articles of which the sender's name and address cannot be ascertained unless they be opened, shall, after remaining unclaimed for three weeks as aforesaid, be forwarded to the office of the Post-Master-General of the presidency.

Clause 2.—The Post-Master-General or some person duly appointed for the purpose, and bound to secrecy, shall immediately open all such letters or other articles, and, if the addresses of the senders can be discovered, shall enclose them in dead-letter covers, and return them to the senders. All letters and other articles of which neither the person addressed nor the sender can be found, shall, after they have remained unclaimed in the office of the Post-Master-General for one year, be destroyed.

Opening letters.

Return to sender.

When destroyed.

Clause 3.—All money found in any unclaimed letter or other article shall be paid in to the public treasury: and all other valuable property found as above shall be sold by the Post-Master-General of the presidency or by some one duly authorized by him for that purpose; and the proceeds of the sale shall be paid into the public treasury for the benefit of any person who may have a right thereto, after deducting all sums due from such person for postage.

Disposal of money and valuables.

30. Every letter or other article rejected unopened by the person to whom it is addressed, shall, if any postage is due thereon, and if the sender's name and address are written on the cover, be returned to the posting-office, in order that the postage due may be recovered from the sender;

in all other cases, or when the sender's name and address are not on the cover, such letter or other article shall be forthwith sent to the office of the Post-Master-General of the presidency, who shall open the letter or other article and take measures to recover the postage from the sender, or shall, at his discretion, destroy the letter or other article;

and all money or other valuable property which such letter or other article may contain, shall be disposed of in the manner prescribed in the preceding section with respect to such money or property contained in unclaimed letters.

Disposal of money and valuables.

PART V.

MAILS ON BOARD INWARD AND OUTWARD-BOUND VESSELS.

31. When any vessel arrives by sea at any place within British India at which there is a post-office, the commander of such vessel shall, as speedily as possible, cause every letter, mail-bag, box, and packet on board of such vessel which is directed to that place, and not excepted from the exclusive privilege of the post-office, to be delivered either at the post-office or to some officer of the post-office authorized to receive the same;

Commanders of inward-bound vessels carrying mails how to proceed on arrival.

and if there be on board any letter, mail-bag, box, or packet, directed to any other place and not excepted from the exclusive privilege aforesaid, the said commander shall as speedily as possible report the same to the Post-Master of the place at which he has arrived, and shall act according to the directions he may receive from such Post-Master, and the receipt of such Post-Master shall discharge such commander from all responsibility in respect of such letter or packet.

Every commander of a vessel who shall wilfully disobey any of the directions contained in this section shall be punished with a fine not exceeding one thousand rupees.

Penalty.

32. Every person being either the commander of a vessel inward-bound, or any one on board such vessel, who shall, within British India, knowingly have in his possession any letter not excepted from the privilege of the post-office, after any part of the letters on board the said vessel shall have been sent to the post-office, shall forfeit, for every such letter, a sum not exceeding fifty rupees, whether the letter be in the baggage or on the person of the offender, or otherwise in his custody;

and every such person who shall detain any such letter after demand made for the same by an officer of the post-office shall forfeit, for every such letter, a sum not exceeding one hundred rupees.

33. For every letter delivered by the commander of any ship in conformity with the directions of section 31 of this Act, the officer in charge of the post-office shall pay to the said commander the sum of one anna; and the sum of one anna shall be chargeable as postage on such letter, in addition to any other postage chargeable thereon under this Act.

Bounty-money.

Provided that no payment shall be made to the commander of any vessel on account of the delivery of any letter, unless the claim of such commander shall be preferred before the vessel leaves the place at which the letter was delivered, or before the expiration of two months from the date of the arrival of such vessel.

Limitation of claim there-
to.

Provided also, that nothing contained in section 31 and the former part of this section of this Act, shall extend to any letter or mail-bag, or box or packet conveyed by any mail-ship or mail-steamer recognized as such by the Governor-General of India in Council.

Saving of letters, &c.,
conveyed in mail-ships.

34. The commander of every vessel leaving any place in British India by sea shall receive on board of such vessel every letter and packet which he shall be required so to receive by any officer of the post-office, and shall give a receipt for such letter or packet; and every commander of a vessel who shall wilfully disobey any direction contained in this section shall be punished with a fine not exceeding one thousand rupees.

Commanders of outward-
bound vessels to receive
mails on board.

PART VI.

POSTAGE-STAMPS.

35. All letters and other articles having a stamp or stamps affixed thereto (such stamp or stamps in every case being affixed on the outside, and being equal in value to the rate or rates of postage to which such letters or other articles are liable under this Act), shall, provided the stamp or stamps shall not have been used before, be considered as pre-paid.

Stamped letters consider-
ed pre-paid.

36. The Governor-General of India in Council shall cause postage-stamps to be provided, denoting such values as the said Governor-General of India in Council may direct, and shall give such orders, and make such other regulations relative thereto, as may be deemed expedient.*

37. Postage-stamps, provided as aforesaid, shall be under the care and management of such officer or officers as the Governor-General of India in Council shall from time to time direct :

Postage-stamps shall be considered as stamps issued by Government for the purpose of revenue, within the meaning of the Indian Penal Code ; and all sums of money realized by the sale of such stamps shall be carried in the public accounts to the credit of the post-office.

38. The Governor-General of India in Council may, from time to time, make rules for the appointment and Government of vendors of postage-stamps, and thereby direct how and under what terms and conditions postage-stamps may be supplied to them for sale ; and whether any and what security shall be given by such vendors ; and whether any and what remuneration or discount shall be allowed to them ; and how and in what manner, and at what time or times, such vendors shall keep and render their accounts, and pay over the proceeds of any sales made by them, or re-deliver the stamps entrusted to them.

39. Government vendors of postage-stamps shall be bound by such rules, and, in case of any wilful breach thereof, shall be punished with a fine not exceeding two hundred rupees, in addition to any other proceedings to which they may be liable.

40. Any Government vendor of postage-stamps who shall be convicted of refusing, or unnecessarily delaying without reasonable excuse, to furnish postage-stamps to any person desiring to purchase the same, and tendering in lawful currency the full value thereof (the stamp-vendor having in his possession for sale sufficient stamps of the description and value required), shall be punished with a fine not exceeding one hundred rupees.

41. Any Government vendor of postage-stamps convicted of taking from a purchaser a higher price than the value denoted on the stamps sold, shall be punished, on conviction, with imprisonment of either description, as defined in the India Penal Code, for any term not exceeding six months, or shall be liable to a fine not exceeding one hundred rupees ; and shall also be liable to refund to the purchaser the whole amount proved to have been taken in excess, which amount may be recovered by such purchaser before a Criminal Court, in the same manner as any penalty under this Act.

* See Financial Department Notification No. 1875, dated 15th March 1869, *Gazette of India*, 20th March 1869, p. 668.

PART VII.

OFFENCES AGAINST THE POST OFFICE.

42. No person shall knowingly post or send, or tender or deliver in order to be sent by the post, any letter, parcel, or packet containing any explosive or other dangerous substance by post. Penalty for sending dangerous substance by post. and any person contravening this prohibition shall be punished, for every such offence, with a fine not exceeding two hundred rupees.

43. Every person who shall, for the purpose of defrauding the post-office revenue, wilfully certify by writing on any official or other letter or packet delivered at any post-office for conveyance by post, that which is not true in respect of such letter or packet, or in respect of the whole of its contents, or shall knowingly send or deliver, or attempt to send or deliver, for conveyance by post, any letter or packet with any such false certificate thereon; and every person who shall knowingly send or permit to be sent by post, under colour or pretence of an official communication, any letter, paper, writing, or other enclosure of a private nature, Making false certificate to defraud post-office. shall, for every such offence, be punished with a fine not exceeding Sending private letter as official. fine hundred rupees.

44. It shall not be lawful for any person, unless acting by express order of the Government, to detain, except for a criminal offence, a post-office messenger whilst carrying the mails, or to detain any carriage or horse upon which the mails are being carried, or on any pretence to open a packet or mail-bag or box in transit from one post-office to another, and every person who shall be guilty of any of the offences mentioned in this section shall be punished with a fine not exceeding five hundred rupees. Penalty for detaining mails or opening mail-bags.

45. Every person who shall fraudulently retain, or wilfully secrete, or make away with, or keep or detain, or, being required to deliver up by an officer of the post-office, shall neglect or refuse to deliver up a post-letter or other article which ought to have been delivered to any other person, or a mail-bag, box, or packet containing a letter or other article which shall have been sent by the post, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine. Penalty for retaining letters, &c., delivered by mistake.

46. Clause 1.—Every person who shall convey, otherwise than by the post, a letter not excepted from the said exclusive privilege conferred on the Government of India by section 5 of this Act, shall, for every letter so conveyed, forfeit a sum not exceeding fifty rupees. Penalty for conveying letter in breach of privilege.

Clause 2.—Every person who shall perform, otherwise than by the post, any services incidental to conveying letters from place to place, whether by receiving, taking up, ordering, collecting, carrying, tendering, or delivering a letter or letters not excepted from the said exclusive privilege, shall forfeit for every such letter a sum not exceeding fifty rupees. Penalty for performing, otherwise than by post, services incidental to conveying letters.

Clause 3.—Every person who shall make a collection of letters for the purpose of transmitting them through the post in a clubbed packet, and every person who shall knowingly tender or deliver a letter to be sent in a clubbed packet, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for making clubbed packet or tendering or delivering letter to be sent therein.

Clause 4.—Every person who shall send a letter not excepted from the said exclusive privilege, otherwise than by the post, or shall either tender or deliver a letter not so excepted, in order to be sent otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for sending letter in breach of privilege, or delivering letter to be so sent.

Clause 5.—Every person who shall make a collection of excepted letters for the purpose of sending them otherwise than by the post shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for collecting excepted letters to send them otherwise than by post.

Clause 6.—Every person who shall carry, receive, tender, or deliver a letter, or collect letters contrary to the provisions of section 6 of this Act, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for breach of provisions of section 6.

Clause 7.—Every person who shall be in the practice of committing any of the acts mentioned in this section shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees.

Penalty for practice of acts mentioned in section.

47. Every person employed to convey or deliver any mail-bag or box, or any letter or other article, sent by post, who shall be guilty, while so employed, of drunkenness, carelessness, or other misconduct, whereby the safety of any such bag, box, or letter or other article shall be endangered; or who shall loiter or make delay in the conveyance or delivery of any such bag, box, letter, or other article; or who shall not use proper care and diligence safely to convey or deliver any such bag, letter, or other article, shall be liable to a fine not exceeding fifty rupees;

Penalty for neglect on part of persons employed to carry mails.

and any person employed to deliver a letter or other article sent by the post, who shall not duly deliver the same, shall, within a reasonable time not exceeding twenty-four hours, report the fact at the post-office where he received such letter or other article, and return the same; and if any such person shall wilfully make a false report, he shall be liable to a fine not exceeding fifty rupees.

48. Whoever, being in the employ of the Government in the Post-Office Department, shall steal, fraudulently appropriate, or wilfully secrete, destroy, or throw away any letter or other article sent by post, or anything contained in any such letter or other article, or shall mutilate or break open any such letter or other article, or any mail-bag or box, with the intention of fraudulently appropriating anything therein contained, shall be punished, on con-

Penalty for stealing, &c, or opening, letters, &c., by persons employed in post-office.

viction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding seven years, and shall also be liable to fine.

49. Whoever, being in such employ as last aforesaid, shall fraudulently put any wrong mark on any letter or other article, or shall fraudulently alter, remove, or cause to disappear any mark or stamp which is on any letter or other article; or shall fraudulently use or place with or upon any letter or other article, any stamp which shall have been removed from any other letter or other article; or, being entrusted with the delivery of any letter or other article, shall knowingly demand or receive any sum of money for the postage thereof other than the sum duly chargeable for such postage, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

50. Whoever, being in such employ as last aforesaid, and being entrusted with the preparing or keeping of any document, shall, with a fraudulent intention, prepare the document incorrectly, or alter that document, or secrete or destroy that document, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

51. Whoever, being in such employ as last aforesaid, shall send by the post, or put into any mail-bag or box, any unstamped letter or other article upon which postage has not been paid or charged in the manner prescribed in this Act, intending thereby to defraud the Government of the postage on such letter or other article, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

52. Whoever abets, within the meaning of the Indian Penal Code, or conceals, any offence made punishable by this Act, shall be punished with the punishment provided for such offence.

53. Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any Criminal Court upon summary conviction.

54. No conviction, order, or judgment of any Criminal Court, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds, but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, and if no jurisdiction appears on the face of the

Penalty for fraudulently altering marks on letters, &c., by persons employed in post-office.

Penalty for preparing incorrectly, or altering or secreting, documents by persons employed in post-office.

Penalty for sending letters on which postage not paid or charged, by persons employed in post-office.

Penalty for abetting or concealing offences under Act.

Person charged with offence punishable with fine only may be summarily convicted.

Conviction quashed on merits only.

Form of conviction.

conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions.

55. [*Repealed by Act XII. of 1876.*]

56. All fines imposed under the authority of this Act, for offences punishable by fine only, by any Criminal Court,* may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers.

In case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take security by way of recognizance or otherwise.

If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer, by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount.

57. A share not exceeding one moiety of every fine imposed and recovered under this Act may be awarded to the informer.

58. No proceedings shall be taken for the recovery of any fine imposed under the authority of this Act, for offences punishable by fine only, without an order of Government, or an order in writing under the hand of the Director-General of the post-office, or of a Post-Master-General, or other officer specially invested with the powers of a Post-Master-General.

59. If any public servant who shall be employed in the post-office department, or shall be appointed a vendor of postage-stamps, or entrusted by the Government of India or any Local Government with the sale of postage-stamps within the dominions of any Foreign Prince or State in India in alliance with Her Majesty, in which a post shall be

* See Act XII. of 1876.

established by the Government of India, shall, within the dominions of such Prince or State, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed, appointed, or entrusted as aforesaid within British India, such public servant shall be guilty of an offence, and, on conviction thereof, shall be punished in the same manner as if such act had been done or omitted within British India ;

and every such person may be tried, convicted, and punished, either

Officers authorized to try by fine or otherwise, according to the nature of the offence, by any Court or officer duly empowered by the Governor-General of India in Council to take cognizance of offences committed in such dominions by public servants, or by any Court or Magistrate, or other competent officer in any part of British India, in the same manner as if the offence had been committed in such part.

60. If any officer in charge of a post-office shall suspect that any letter or other article lying for delivery at his office contains any contraband article, or any article on which duty is owing to Government ; or that any letter or other article lying for delivery at the post-office contains any writing or enclosure in contravention of the provisions of section 14, 16, or 43 of this Act, it shall be lawful for such officer to summon the person to whom the letter or other article is directed, to attend at the post-office by himself or agent, within forty-eight hours after the arrival thereof at that post-office, and to open the same in the presence of the person to whom it is directed, or of that person's agent, and if that person shall not so attend by himself or agent, then to open it in the absence of that person.

Letters, &c., suspected to contain contraband articles, or writing in contravention of Act, how dealt with.

letter or other article lying for delivery at his office contains any contraband article, or any article on which duty is owing to Government ; or that any letter or other article lying for delivery at the post-office contains any writing or enclosure in contravention of the provisions of section 14, 16, or 43 of this Act, it shall be lawful for such officer to summon the person to whom the letter or other article is directed, to attend at the post-office by himself or agent, within forty-eight hours after the arrival thereof at that post-office, and to open the same in the presence of the person to whom it is directed, or of that person's agent, and if that person shall not so attend by himself or agent, then to open it in the absence of that person.

Provided that, if the officer in charge be under the rank of a Post-Master, he shall call in two respectable persons as witnesses before he shall open a letter or other article in the absence of the person to whom it is addressed.

Provided also, that in all cases the opened letter or other article

Witnesses to examination of letter.

shall be subsequently delivered to the person to whom it is addressed, unless it be required for ulterior proceedings, and that the opening of the same and the circumstances connected therewith shall be immediately reported to the Post-Master-General.

Delivery of letter to addressee.

It shall also be lawful for any officer in charge of a post-office to

Power to require customs-pass.

refuse to forward any parcel through the post-office by sea to any foreign port, or to any place not on the Continent of India, unless such parcel be accompanied by a custom-house pass.

61. Whenever an offence shall be committed in respect of any

In charges for offences under Act, property sent by post laid in Post-Master-General.

mail-bag or box, or any letter or other article sent by the post, it shall be lawful to lay, in the charge to be preferred against the offender, the property of such mail-bag, box, letter, or

other article in the Post-Master-General of the presidency; and it shall

Proof of value unnecessary. not be necessary in the charge to allege or to
sary. prove upon the trial or otherwise, that such

mail-bag, box, letter, or other article was of any value; and in any

Statement that offender charge to be preferred against any person em-
employed in post-office suf- ployed under the post-office for any offence
ficient. committed against this Act, it shall be lawful

to state that such offender was employed under the post-office at the
time of committing the offence, without stating further the nature or
particulars of his employment.

PART VIII.

MISCELLANEOUS.

62. Letters and other articles on Her Majesty's service, certified

Letters on Her Majesty's to be such by the signature of any public officer
service, duly certified as authorized in that behalf by the Governor-
such, how charged. General of India in Council, shall be forwarded

by the post, and the postage due thereon shall be charged to or recover-
ed from the several public departments to or from which such letters
or packets are sent, in such manner as the said Governor-General of
India in Council shall, from time to time, direct.

63. It shall be lawful for the Governor-General of India in Council

Governor-General may from time to time to frame rules for the con-
frame rules. duct of the post-office not inconsistent with
this Act, and therein to prescribe the regulations, conditions, and re-
strictions according to which all letters and other articles shall be post-
ed, forwarded, conveyed, and delivered.*

64. It shall be lawful for the Governor-General of India in Council

District-dâks. from time to time to frame rules for the man-
agement of all or any zamindâri, thâna, or other
district-dâks, and to declare from time to time what portions of this Act
shall be applicable to such dâks, and to persons employed in connection
therewith.†

65. The Government shall not be responsible for any loss or damage

Government not responsi- which may occur in respect of any thing en-
ble for loss. trusted to the post-office‡ for conveyance;

and no person employed by the Government in the post-office

Responsibility of its ser- department shall be responsible for any such
vants. loss or damage, unless that person shall cause
such loss or damage negligently, maliciously, or fraudulently.

* Under this section the transmission of opium by post, except on account of Government, has been prohibited, Financial Department Notification No. 3526, dated 17th September 1869, *Gazette of India*, 18th September 1869, p. 287.

† In exercise of this power, the Governor-General in Council has declared the follow- ing sections applicable to district-dâks throughout India and to the persons employed in connection therewith, namely, 25, 27, 35, 42, 43, 44, 45, 47, 48, 49, 50, 51, and 52, Home Department Notification, No. 1926, dated 25th February 1867, *Gazette of India*, 2nd March 1867, p. 228.

‡ 1 Mad. Rep. 202. As to the Government bullock-train, see 3 N.-W. P. 195.

ACT NO. XXII. OF 1867.

RECEIVED THE G.-G.'s ASSENT ON THE 15TH MARCH 1867.

An Act for the regulation of public Saráis and Puraos.

WHEREAS it is expedient to provide for the regulation of public Saráis and Puraos ; It is hereby enacted as follows :—

Preamble.

1. Regulation XIV. of 1807 of the Government of the Presidency of Fort William in Bengal, section 11, clause 5, is hereby repealed, so far as it applies to public saráis in the territories to which this Act may from time to time apply.

Repeal of Bengal Regulation XIV. of 1807, section 11, clause 5.

2. In this Act—unless there be something repugnant in the subject or context—

Interpretation-clause.

“Sarái” means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a sarái, the part so used of such building.

It also includes a puroa so far as the provisions of this Act are applicable thereto :

“Keeper of a sarái” includes the owner and any person having or acting in the care or management thereof :

“Magistrate of the District” means the chief officer charged with the executive administration of a district in criminal matters, whatever may be his designation :

Words in the singular include the plural, and *vice versa*. And in any place in which this Act shall operate, “Local Government” shall mean the person administering executive Government in such place, and shall include a Chief Commissioner and the Commissioner in Sindh.

3. Within six months after this Act shall come into operation, the Magistrate of the district in which any sarái to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarái notice in writing of this Act, by leaving such notice for the keeper at the sarái ; and shall by such notice require the keeper to register the sarái as by this Act provided.

Notice of Act to be given to keepers of saráis.

Form of notice.

Such notice may be in the form in the schedule to this Act annexed or to the like effect.

4. The Magistrate of the district shall keep a register in which shall be entered by such Magistrate, or such other person as he shall appoint in this behalf, the names and residences of the keepers of all saráis within his jurisdiction, and the situation of every such sarái.

Registers of sarais to be kept.

No charge shall be made for making any such entry.

5. After one month after the giving of such notice to register as

Lodgers, &c., not to be received in saráis until registered.

by this Act provided, the keeper of any sarái or any other person shall not receive any lodger, or allow any person, cattle, sheep, elephant, camel, or other animal, or any vehicle, to halt or be placed in such sarái until the same, and the name and residence of the keeper thereof, shall have been registered as by this Act provided.

6. The Magistrate of the district may, if he shall think fit, refuse

Magistrate may refuse to register keeper not producing certificate of character.

to register, as the keeper of a sarái, a person who does not produce a certificate of character in such form, and signed by such persons, as the Local Government shall from time to time direct.

Duties of keepers of saráis.

7. The keeper of a sarái shall be bound—

(1) when any person in such sarái is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station :

(2) at all times when required by any Magistrate or any other person duly authorized by the Magistrate of the district in this behalf, to give him free access to the sarái, and allow him to inspect the same or any part thereof :

(3) to thoroughly cleanse the rooms and verandahs and drains of the sarái, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the district, or such person as he shall appoint in this behalf :

(4) to remove all noxious vegetation on or near the sarái, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarái :

(5) to keep the gates, walls, fences, roofs, and drains of the sarái, in repair :

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the district, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at, or placed in, the sarái : and

(7) to exhibit a list of charges for the use of the sarái at such place and in such form and languages as the Magistrate of the district shall from time to time direct.

8. The keeper of a sarái shall, from time to time, if required so to

Power to order reports from keepers of saráis.

do by an order of the Magistrate of the district served upon him, report, either orally or in writing, as may be directed by the Magistrate, to such Magistrate or to such person as the Magistrate shall appoint, every person who resorted to such sarái during the preceding day or night.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the district to the keeper.

When schedules to be furnished.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner and at such intervals as may from time to time be ordered by him.

9. If any sarái, by reason of abandonment or of disputed ownership, shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the district, after due enquiry, may cause notice in writing to be given to the owner, or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarái, requiring the persons concerned therein, whoever they may be, to secure, enclose, clean, or clear the same ;

and if such requisition shall not be complied with within eight days, the Magistrate of the district may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarái, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarái, by the sale of any material found therein.

10. If a sarái or any part thereof be deemed by the Magistrate of the district to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in or halting at the sarái, he shall give notice in writing to the keeper of the sarái, requiring him forthwith to take down, repair, or secure (as the case may be) the sarái, or such part thereof as the case may require.

If the keeper do not begin to take down, repair, or secure the sarái, or such part as aforesaid, within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarái as he shall think necessary to be taken down, repaired, or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarái, and shall be recoverable from him as hereinafter mentioned.

11. If any such sarái or any part thereof be taken down by virtue of the powers aforesaid, the Magistrate of the district may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the overplus (if any) arising from such sale to the owner of such sarái on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

12. Whoever, being the keeper of any sarái, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or, after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the district to cleanse or clear

the same, or after he shall have been convicted of suffering the same to be in such state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act.

Provided that the Magistrate of the district may, in lieu of enforcing such daily penalty, enter on and cleanse or clear the said sarái, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act or with any other law for the time being in force, and may from time to time repeal, alter, and add to the same.

All regulations made under this Act, and all repeals thereof and alterations and additions thereto, shall be published in the local official Gazette.

14. If the keeper of a sarái offend against any of the provisions of this Act, or any of the regulations made in pursuance of this Act, he shall, for every such offence, be liable, on conviction before any Magistrate, to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues:

Provided always, that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under section 307 of the Code of Criminal Procedure.*

15. Where a keeper of a sarái is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarái without the license in writing of the Magistrate of the district, who may either withhold such license or grant the same on such terms and conditions as he may think fit.

16. No part of this Act, except section 8, shall apply to any sarái which may be under the direct management of the Local Government, or of any municipal committee.

17. This Act shall, in the first instance, extend only to the territories under the government of the Lieutenant-Governor of the North-West Provinces of the presidency of Fort William in Bengal.

But it shall be lawful for the Local Government, by notification in the local Gazette, to extend this Act, *mutatis mutandis*, to any other part of the territories which are or may be vested in Her Majesty or Her Successors by the

* See Act X. of 1882.

Statute 21 & 22 Vic., cap. 106 (*An Act for the better Government of India*). except the towns of Calcutta, Madras, and Bombay, and the Settlement of Prince of Wales's Island, Singapore, and Malacca.

Short title.

18. This Act may be called "The Saráis' Act, 1867."

SCHEDULE.

FORM OF NOTICE.

Take notice that on the day of 1867, an Act, called "The Saráis' Act, 1867," was passed, and that, before the day of , 18 , you, being the keeper of a sarái [or purao] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*], must have your sarái [or purao] registered, and that the register is to be kept at [*here state where the register is to be kept*], and that, if you do not have your sarái [or purao] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues, and that, on your applying to [*here give the name and address of the person to keep the register*], he will register your sarái [or purao] free of all charge to you.

Dated the day of 18 .

ACT NO. XXV. OF 1867.

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1867.

*An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.**

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of three copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

Interpretation-clause.

1. In this Act—unless there shall be something repugnant in the subject or context—

“Book” includes every volume, part, or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed :

“British India” means the territories which are or shall be vested in Her Majesty or Her Successors by the Statute 21 & 22 Vic., cap. 106, (*An Act for the better Government of India*), other than the Settlement of Prince of Wales’s Island, Singapore, and Malacca :

“Magistrate” means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police and a Justice of the Peace :

Words in the singular include the plural, and *vice versa* ; words denoting the masculine gender include females :

And in every part of British India to which this Act shall extend, “Local Government” shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

2. [*Repealed by Act XIV. of 1870.*]

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

3. Every book or paper printed within British India shall have

Particulars to be printed on books and papers. printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) of the publisher, and the place of publication.

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be :—

“ I, A. B., declare that I have a press for printing at ———.” And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down :—

(1.) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration :

“ I, A. B., declare that I am the printer [*or publisher, or printer and publisher*] of the periodical work entitled ———, and printed [*or published, or printed and published, as the case may be*] at ———.” And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted :

(2.) As often as the place of printing or publication is changed, a new declaration shall be necessary.

(3.) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or other Court within the local limits of whose ordinary original civil jurisdiction the said declaration shall have been made.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as

against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

8. Provided always, that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration:—

“I, *A. B.*, declare that I have ceased to be the printer [*or publisher, or printer and publisher*] of the periodical work entitled ——.”

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

In all trials in which a copy, attested as is aforesaid, of the former declaration, shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

PART III.

DELIVERY OF BOOKS.

9. Three printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be produced, and also of any second or subsequent edition which shall be so produced with any additions or alterations, whether the same shall be in letter-press or in the maps, prints, or other engravings belonging thereto, and whether the first edition of such book shall have been produced before or after this Act shall come into force, shall, within one calendar month after the day in which any such book shall first be delivered out of the press, and notwithstanding any agreement (if the book be published) between the

printer and publisher thereof, be delivered by the printer, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed or lithographed, at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct.*

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints, and engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to any periodical work published in conformity with the rules laid down in section 5 of this Act.

10. Such officer shall thereupon give a receipt in writing for the copies so received, and, if the book is for sale to the public, shall, on the publication thereof, pay the publisher for the same copies at the rate at which the book shall be *bonâ fide* sold for cash to the public.

11. One of such copies shall be transmitted to the Secretary of State for India; another copy shall be disposed of as the Governor-General of India in Council shall, from time to time, by general or special order, direct; and the remaining copy shall, after a memorandum containing the particulars hereinafter mentioned respecting the book shall have been registered as hereinafter provided, be deposited, in such public library, or be otherwise disposed of, as the Local Government shall from time to time determine.

PART IV.

PENALTIES.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

* See *Oudh Government Gazette*, 26th July 1873, p. 7.

15. Whoever shall print or publish any such periodical work as is hereinbefore described, without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

16. If any printer of any such book as is referred to in section 9 of this Act, or of any second or subsequent edition of any such book, shall neglect to deliver three copies of the same pursuant to this Act, he shall, for every such default, forfeit, besides the value of the copies which he ought to have delivered, a sum not exceeding fifty rupees, to be recovered by the said officer on conviction before a person exercising any of the powers of a Magistrate.

If any publisher or other person employing any such printer shall neglect to supply him in manner aforesaid with the maps, prints, or engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the provisions of the same section, such publisher or other person shall, for every such default, forfeit, besides the value of the said maps, prints, or engravings which he ought to have supplied, a sum not exceeding the said amount, and such sum shall be recovered in manner last aforesaid.

17. All pecuniary penalties imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras, and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act for regulating the police of such towns in force for the time being.

All such penalties shall be disposed of as the Local Government shall from time to time direct.

PART V.

Registration of Books.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered pursuant to section 9 of this Act.

Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

(1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language :

(2) the language in which the book is written :

(3) the name of the author, translator, or editor of the book or any part thereof :

- (4) the subject :
- (5) the place of printing and the place of publication :
- (6) the name or firm of the printer and the name or firm of the publisher :
- (7) the date of issue from the press or of the publication :
- (8) the number of sheets, leaves, or pages :
- (9) the size :
- (10) the first, second, or other number of the edition :
- (11) the number of copies of which the edition consists :
- (12) whether the book is printed or lithographed :
- (13) the price at which the book is sold to the public ; and
- (14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of
 Registration of memoran- each book as soon as practicable after the deli-
 dum. very of the copies thereof in manner aforesaid.

Every registration under this section shall, upon payment of the
 Effect of registration. sum of two rupees to the officer keeping the
 the book of registry kept under Act No. XX. of 1847 (*for the encour-
 Act XX. of 1847 applied. agement of learning in the Territories sub-
 ject to the government of the East India Com-
 pany, by defining and providing for the enforcement of the right
 called Copyright therein*) ; and the provisions contained in that Act
 as to the said book of registry shall apply, *mutatis mutandis*, to the
 said catalogue.

19. The memoranda registered during each quarter in the said
 Publication of memoran- catalogue shall be published in the local Ga-
 da registered. zette, as soon as may be after the end of such
 Sending copies. quarter, and a copy of the memoranda so pub-
 lished shall be sent to the said Secretary of State and to the Secretary
 to the Government of India in the Home Department respectively.

PART VI.

Miscellaneous.

20. The Local Government shall have power to make such rules
 Power to make rules. as may be necessary or desirable for carrying
 out the objects of this Act, and from time to
 time to repeal, alter, and add to such rules.†

* All such books as become the property of Government for educational purposes are exempted from this payment, Home Department, No. 4823, dated 21st October 1869, *Gazette of India*, 23rd October 1869, p. 400.

† Rules have been made under this section by the—

Madras Govt., see *Fort Saint George Gazette*, dated 27th September 1867, p. 739.

Bombay Govt., see *Bombay Govt. Gazette*, dated 6th February 1868, p. 93.

ditto ditto dated 20th July 1871, p. 783.

Bengal Govt., see *Calcutta Gazette*, dated 3rd July 1867, p. 1137.

N. W. P. Govt., see *Govt. Gazette*, N. W. P., dated 15th May 1867, pp. 327—29.

Panjab Govt., see *Govt. Gazette*, Panjab, dated 20th June 1867, p. 531.

Chief Commr., Oudh, see *Govt. Gazette*, Oudh, dated 26th July 1873, p. 8.

Central Provs., see *Central Provs. Gazette*, dated 13th July 1867, supp.

British Burma, see *British Burma Gazette*, dated 9th October 1875, Part II., pp. 189, 190.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

21. The Governor-General of India in Council may, by notification in the *Gazette of India*, exclude any class of books from the operation of the whole or any part or parts of this Act.*

22. Part III., and section 16, and Part V. of this Act, shall remain in force until the Governor-General of India in Council shall declare to the contrary by notification in the *Gazette of India*.

* "By virtue of the power vested in the Governor-General in Council by section 21 of Act XXV. of 1867, entitled 'An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books,' His Excellency in Council is pleased to declare that the following publications are exempted from the provisions of the said Act :—

- 1.—[Cancelled. Home Department No. 3276, dated 16th August 1872, *Gazette of India*, 17th August 1872, Part I., p. 777.]
- 2.—Acts of the Legislative Councils without notes or commentaries.
- 3.—Price-lists and tradesmen's circulars.
- 4.—Catalogues of books and other articles, auctioneer's notices, and advertisements.
- 5.—Play-bills, comprising advertisements of theatrical and musical entertainments.
- 6.—Decisions of Courts of law without notes or commentaries.
- 7.—Petitions and appeals addressed to constituted authority under the provisions of law.
- 8.—Testimonials of private individuals or public officers.
- 9.—Annual reports of schools, banks, societies, and firms.
- 10.—Almanacs and calendars.
- 11.—Labels affixed to articles of commerce."

Home Department, No. 5604, dated 21st December 1871, *Gazette of India*, 23rd December 1871, p. 979.

ACT NO. XIV. OF 1868.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH APRIL 1868.

*An Act for the prevention of certain Contagious Diseases.**

Preamble WHEREAS it is expedient to provide for the better prevention of certain contagious diseases ; It is hereby enacted as follows :—

Preliminary.

Short title.

1. This Act may be cited as Contagious Diseases' Act, 1868."

Interpretation-clause.

2. In this Act—

"Magistrate" means any person exercising the powers of a Magistrate, or of a subordinate Magistrate of the first class, and includes a Magistrate of Police in a presidency-town :

"Contagious disease" means any contagious venereal disease :

"Brothel-keeper" means the occupier of any house, room, or place to or in which women resort or are for the purpose of prostitution, and every person managing or assisting in the management of any such house, room, or place.

3. The places to which this Act applies shall be such places as the

Extent of Act.

Local Government shall, from time to time, with the previous sanction of the Governor-General of India in Council, specify by notification in the official Gazette.

The limits of such places shall, for the purpose of this Act, be such

Limits of places where Act operates.

as are defined in the said notification, and may, from time to time, with such sanction as aforesaid, be altered by a like notification.

Unregistered Prostitutes and Brothel-keepers.

4. In any place to which this Act applies, no woman shall carry on

Prostitutes and brothel-keepers to be registered. the business of a common prostitute, and no person shall carry on the business of a brothel-keeper, without being registered under this Act at such place, and without having in her or his possession such evidence of registration as hereinafter provided.

Any woman carrying on the business of a common prostitute, and

Punishment for not registering.

any person carrying on the business of a brothel-keeper, without having been registered as aforesaid, or without having in her or his possession such evidence as aforesaid, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both.

* Some of the provision of this Act are taken from 29 Vic , c. 35, ss. 8, 21, 22, 36.

Registration of Prostitutes and Brothel-keepers.

5. The Local Government shall make rules for the registration of common prostitutes and of brothel-keepers, and shall appoint officers for the conduct of such registration, and may, with the previous sanction of the Governor-General of India in Council, assign salaries and establishments to the said officers.

To provide books and forms. The Local Government shall also provide such books and forms as may be necessary for the purposes of this Act.

Every woman complying with such rules (so far as they relate to prostitutes), and every brothel-keeper complying with such rules (so far as they relate to brothel-keepers), shall be deemed to be registered under this Act, and the registering officer shall furnish her or him with such evidence of registration as the Local Government shall from time to time direct.

The name, age, caste (if any), and residence of every such woman, and such other particulars respecting her as the Local Government shall from time to time direct, shall be entered in a book to be kept for that purpose.

The name and residence of every such brothel-keeper, and the situation of the house, room, or place in which he carries on his business, shall be entered in a book to be kept for that purpose.

6. Whenever any such woman changes her residence, she shall give notice thereof to such person and in such manner as the Local Government shall from time to time direct, and the necessary alterations shall be made in the said book and in the evidence of registration furnished to her as aforesaid.

Any such woman failing to give notice as aforesaid shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to fourteen days, or with fine not exceeding fifty rupees, or with both.

Whenever any brothel-keeper changes his residence, or acquires or enters into the occupation of any such house, room, or place as last aforesaid, other than the house, room, or place of which the situation has been registered as aforesaid, he shall give notice thereof to such person and in such manner as the Local Government shall from time to time direct, and the necessary alterations or additions shall be made in or to the said book and in the evidence of registration furnished to him as aforesaid.

Any such brothel-keeper failing to give notice as last aforesaid shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both.

Refusal to show Evidence of Registration.

7. Any registered woman or brothel-keeper who, without reasonable excuse, neglects or refuses to produce and show the evidence of her or his registration with which she or he shall have been furnished as aforesaid, when required so to do by such officer as the Local Government shall from time to time appoint in this behalf, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to fourteen days, or with fine not exceeding fifty rupees, or with both.

Information of the class of officers for the time being authorized to make requisitions under this section shall be furnished to registered women and brothel-keepers, under such rules as the Local Government shall from time to time prescribe.

Special Provisions relating to Brothels.

8. If any brothel-keeper, whether registered as such under this Act or not, has reasonable cause to believe any woman to be a prostitute and not to be registered under this Act, and induces or suffers her to resort or be, for the purpose of prostitution, to or in the house, room, or place in which he carries on his said business, he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both :

Provided that nothing in this or any other section of this Act shall exempt the offender from any penal or other consequences to which he may be liable for keeping, or being concerned in keeping, a brothel or disorderly house, or for the nuisance thereby occasioned.

9. Every such brothel-keeper shall be legally bound to furnish information on any subject relating to his business to such officers, and in such manner and at such times as the Local Government shall from time to time prescribe in this behalf.

Every such officer shall, for the purposes of this section, be deemed to be a public servant.

Examination of Prostitutes.

10. The Local Government shall have power to appoint persons to make periodical examinations of registered women, in order to ascertain whether at the time of each such examination they are affected with contagious disease.

11. For each of the places to which this Act applies, the Local Government may make rules consistent with this Act respecting the times and places of examination under this Act at that place, and generally respecting the arrangements for the conduct of those examinations, and for recording the results thereof ; and a copy of rules pur-

porting to be rules under this section shall, if signed by a secretary to such Government, be evidence of such rules for the purposes of this Act.

The Local Government may also require the persons making such examination to send in reports to such persons at such times and in such form as the Local Government shall from time to time prescribe.

Any person not a medical officer appointed to make such examination, and any registered woman,* disobeying rules. any rule made under this section, shall, on conviction before a Magistrate, be punished with simple imprisonment for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both.

Certified Hospitals.

12. The Local Government may, from time to time, provide any buildings or parts of buildings as hospitals for the purposes of this Act.

Any building or part of a building so provided and certified in writing by a secretary to the Local Government to be so provided, shall be deemed a certified hospital under this Act.

Every certified hospital so provided shall be placed under the control and management of such persons as to the Local Government shall from time to time seem fit.

13. The Local Government shall make regulations for the inspection, management, and government of the hospitals as far as regards women authorized by this Act to be detained therein for medical treatment, or being therein under medical treatment, for a contagious disease.

A copy of regulations purporting to be regulations made under this section shall, if signed by a secretary to such Government, be evidence of such regulations for the purposes of this Act.

14. Any woman registered under this Act shall, on receiving notice from any such officer as the Local Government shall from time to time appoint in this behalf, proceed to the certified hospital named in such notice, and place herself there for medical treatment.

If, after the notice is delivered to her, she neglects or refuses to proceed to the said hospital within the time specified in the said notice, an officer of police shall apprehend her and convey her with all practicable speed to such hospital, and place her there for medical treatment.

15. Whenever any such woman affected with contagious disease places herself or is placed as aforesaid in a certified hospital for medical treatment, she shall be detained there for that purpose by such medical officer of the hospital as the Local Government shall from time to time appoint in this behalf, until discharged by him by writing under his hand.

Medical treatment, lodging, clothing, and food shall be provided gratis for every such woman during her detention in the hospital.

16. If any woman authorized by such medical officer to be detained Leaving hospital before discharge, in a certified hospital for medical treatment, quits the hospital without being discharged therefrom by the chief medical officer thereof, by writing under his hand (the proof whereof shall lie on the accused), or

if any woman authorized by this Act to be detained in a certified Disobeying hospital-regulations, hospital for medical treatment, or any woman being in a certified hospital under medical treatment,

for a contagious disease, refuses or wilfully neglects while in the hospital to conform to the regulations thereof approved under this Act,

then and in every such case such woman shall, on conviction before Punishment, a Magistrate, be punished with imprisonment, in the case of a first offence, for any term not exceeding one month, and in the case of a second or any subsequent offence, for any term not exceeding three months; and in case she quits the hospital without being discharged as aforesaid, she may be taken into custody without warrant by any officer of police.

On the expiration of her term of imprisonment under this section, Procedure on close of imprisonment, such woman shall be sent back from the prison to the certified hospital, and shall be detained there, unless the medical officer of the prison at the time of her discharge from imprisonment certifies in writing that she is free from contagious disease (the proof of which certificate shall lie on her).

Out-door Treatment of Prostitutes.

17. It shall be lawful for the Local Government to empower such Power to provide for out-door treatment of registered women, surgeons or other persons as it shall from time to time appoint, to prescribe, by order to be served on any woman registered under this Act, who has not received a notice under section fourteen, the times and places at which she shall attend for medical treatment, and, if necessary, the medical treatment to which she shall submit.

Every such woman disobeying or failing to comply with any such Punishment for disobedience, order shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to a month, or with fine not exceeding one hundred rupees, or with both.

18. If any registered woman on whom such order as last aforesaid Penalty for acting as prostitute while under medical treatment, shall have been served, conducts herself as a common prostitute before such surgeon or other person empowered as last aforesaid certifies in writing to the effect that she is then free from a contagious disease (the proof of which certificate shall lie on her), she shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

19. During the interval between the service of such order upon any registered woman and the granting of such certificate, an allowance for her subsistence shall Subsistence-allowance,

be provided, of such amount and in such manner as the Local Government shall from time to time prescribe.

Segregation of Prostitutes.

20. In any place to which the Local Government shall, by notification in the official Gazette, have specially extended this section, it shall be lawful for such officer as the Local Government shall from time to time appoint in this behalf, to cause a notice to be served on any registered woman, requiring her, after an interval of not less than seven days to be mentioned in the notice, not to reside in any street or place therein specified.

Any registered woman on whom such notice shall have been served disobeying the requisition therein contained shall, on conviction before a Magistrate, be punished with imprisonment, in the case of a first offence, for any term not exceeding one month, and in the case of a second or any subsequent offence, for any term not exceeding three months.

Removal from Registry.

21. The Local Government shall lay down rules prescribing a procedure in accordance with which any woman registered under this Act, and desirous of ceasing to carry on the business of a common prostitute in the place at which she is registered, and of having her name removed from the said book, may have her name removed accordingly.

Miscellaneous.

22. No prosecution shall be instituted under this Act, except at the instance of such officer as the Local Government shall, from time to time, appoint in this behalf.

23. In any proceeding under this Act, any notice, order, certificate, copy of regulations, or other document purporting to be signed by any person in the service of Government, or by any person whom the Local Government shall have, in exercise of the powers conferred on it by this Act, appointed to sign such document, shall, on production, be received in evidence, and shall be presumed to have been duly signed by the person, and in the character by whom and in which it purports to be signed, until the contrary is shown.

24. Every notice and order required by this Act to be served on a woman shall be served by delivery thereof either to her personally, or to some person for her at her usual place of abode.

25. Any suit against any person for anything done in pursuance of this Act shall be commenced within three months after the thing done, and not otherwise.*

* Repealed, so far as relates to the limitation of suits, by Act IX. of 1871.

Notice in writing of every such suit, and of the cause thereof, shall

Notice to defendant. be given to the intended defendant one month at least before the commencement of the suit.

The plaintiff shall not recover if tender of sufficient amends is

Bar to recovery by plaintiff. made before suit, or if a sufficient sum of money is paid into Court after suit brought, by or on behalf of the defendant.

26. The Local Government shall have power, from time to time, to

Power to make rules. declare by what officer anything directed to be done by this Act shall be done, and by what

class of officers information regarding anything made an offence by this Act shall be exclusively furnished.

The Local Government may also from time to time make rules, consistent with this Act, for the guidance of officers in all matters connected with its enforcement.

The Local Government may also from time to time alter and add to any rules or regulations made under this Act: Provided that such alterations and additions are not inconsistent with any of the provisions hereinbefore contained.

ACT NO. XV. OF 1869.

RECEIVED THE G. G.'S ASSENT ON THE 4TH JUNE 1869.

*An Act to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon them.**

WHEREAS it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners, and for service of process upon them; It is hereby enacted as follows :—

PART I.—PRELIMINARY.

Short title.

“ The Prisoners’
Testimony Act, 1869.”

2. For the purposes of this Act, the Courts of Small Causes established within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be deemed to be respectively subordinate to the said High Courts.

PART II.—BRINGING UP PRISONERS.

3. Any Criminal Court not inferior to the Court of a subordinate Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Criminal Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in Schedule A or Schedule B (as the case may be) to this Act annexed, directed to the officer in charge of the said jail.

4. Any Civil Court may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Civil Court, be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Civil Court, make an order in the form in the said Schedule A, directed to the officer in charge of the said jail.

5. When such order is made in any civil matter pending in a Court subordinate to the Court of the District Judge, or in any Court of Small Causes situate outside the local limits of the ordinary original civil jurisdiction of the High Court to countersign orders

* Declared to apply to the whole of British India, except the scheduled Districts, by Act XV. of 1874.

Courts of Judicature at Fort William in Bengal, Madras, and Bombay, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until the same shall have been submitted to, and countersigned by, such Judge, or the District Judge within the local limits of whose jurisdiction such Court of Small Causes is situate.

Every order so submitted shall be accompanied by a statement, under the hand of the Judge, of the facts which, in his opinion, render such order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

6. When any person for whose attendance an order as hereinbefore mentioned shall be made is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the district or division of a district in which the said person is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the jail in which such person is confined.

7. In any case in which a person is confined in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or in a jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court, and such High Court may, if it think fit, make an order in the form in the said Schedule A, directed to the officer in charge of the said jail.

The High Court making the order shall send it to the Magistrate of the district or division of a district in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the officer in charge of the jail in which such person is confined.

For the purposes of this Act, every jail in British Burma shall be deemed to be situate within the local limits of the appellate jurisdiction of the Judicial Commissioner; and the Recorder of Rangoon may issue orders under this section or sections three or four, and may also issue commissions under Part III. of this Act, in any jail in British Burma.*

8. In any case in which a person is confined within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in any criminal matter in such Court

Persons confined beyond limits of appellate jurisdiction of High Court.

or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor-General of India in Council may from time to time prescribe.

To obtain the removal of a person confined in a jail situate beyond the territories for the time being under the administration of the Chief Commissioner of British Burma for the purpose of giving evidence in any criminal matter in the Court of a Recorder, such Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.

9. Upon delivery of any order under this Act to the officer in Prisoner to be brought charge of the jail in which the person named up. therein is confined, such officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned; and shall cause him to be detained in custody in or near the Court until he shall have been examined, or until the Judge or presiding officer of such Court shall authorize him to be taken back to the jail in which he was confined.

10. The Governor-General of India in Council or the Local Government may, from time to time, by notification in the official Gazette,* direct that any person or any class of persons shall not be removed from the jail in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in sections twelve, thirteen, and fourteen, shall not apply to such person or class of persons.

11. When any person named in any order made under section three, section four, or section seven, appears to orders. When jailor may disobey be, from sickness or other infirmity, unfit to be removed, the officer in charge of the jail in which he is confined shall apply to the Magistrate of the district or division of a district in which such jail is situate, and if such Magistrate shall, by writing under his hand, declare himself to be of opinion that such person is, from infirmity, unfit to be removed;

or when any person named in any such order is under committal for trial;

or under a remand pending trial or pending a preliminary investigation;

or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the jail in which he is confined;

then and in every such case the officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued, a statement of his reason for not obeying the same:

* See *British Burma Gazette*, June 19, 1875, Part II., p. 107.

Provided that the said officer shall not so abstain when the order has been made under section three, and the person named in the order is confined under committal for trial or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed, and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.

PART III.—COMMISSIONS.

12. Whenever it shall appear to any Civil Court that the evidence of a person confined in any jail situate within the local limits of the appellate jurisdiction of such Court, if it be a High Court, or if be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who for any of the causes mentioned in section ten or section eleven cannot be brought up before it, is material in any matter depending before such Court,

and whenever it shall appear to any such Court that the evidence of a person confined in any jail so situate, and more than ten miles distant from the place at which such Court is held, is material in any such matter,

and in any case in which the District Judge shall, under section five, have declined to countersign the order for removal,

the Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

13. Whenever it shall appear to any High Court that the evidence of a person confined in a jail situate beyond the local limits of its appellate jurisdiction is material in any civil matter depending before such Court, or before any Court subordinate thereto, the High Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

14. Every commission issued under section twelve or section thirteen shall be directed to the District Court of the district wherein the jail in which such person is confined is situate, and such Court shall commit the execution of the commission to the officer in charge of such jail, or to such other person as the Court think fit.

PART IV.—SERVICE OF PROCESS ON PRISONERS.*

15. When any process directed to any person confined in any jail is issued from any Court, the same may be served by exhibiting to the officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof.

* So much of sections 15 and 16 as relate to process issued by a Civil Court has been repealed by Act X. of 1877, s. 3.

16. Every officer in charge of a jail upon whom any such service

Process served to be trans- as is mentioned in section fifteen shall be made, mitted at prisoner's request. shall, as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof.

Such certificate shall be sufficient *prima facie* evidence of the service of such process; and if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said officer shall cause the same to be so sent through the post-office by registered letter.

PART V.—MISCELLANEOUS.

17. No order in any civil matter shall be made by a Court under

any of the provisions hereinbefore contained until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Provided that, if upon any application for such order it appear to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by Government from any person ordered by the Court to pay the same, as if it were costs of suit recoverable under the Code of Civil Procedure.

18. It shall be lawful for the Local Government, and in cases

arising under section eight, for the Governor-General of India in Council, to make rules,* consistent with this Act,

(1) for regulating the escort of prisoners to and from the Court in which their presence is required;

* Rules by the Governor-General in Council, under this section and section 10, for giving effect to the Prisoners' Testimony Act, 1869, in British Burma—Home Department Notification, No. 544, dated 24th March 1870, *Gazette of India*, 26th March 1870, Part I., p. 202.

Ditto, in the Central Provinces—*Ibid.*, No. 1306, dated 7th September 1869, *Gazette of India*, 11th September 1869, Part I., p. 261.

Ditto, in the Panjáb—*Ibid.*, No. 1389, dated 21st September 1869, *Gazette of India*, 25th September 1869, p. 300.

Ditto, in Coorg—*Ibid.*, No. 1391, dated *idem*, *Gazette of India*, 25th September 1869, p. 301.

Ditto, in the North-Western Provinces—*Ibid.*, No. 1539, dated 13th October 1869, *Gazette of India*, 16th October 1869, p. 386.

Ditto, in Oudh—*Ibid.*, No. 1725, dated 30th November 1869, *Gazette of India*, 4th December 1869, p. 490.

Ditto, in the Haidarābād Assigned Districts—*Ibid.*, No. 1814, dated 15th December 1869, *Gazette of India*, 18th December 1869, p. 530.

Rules made by the Lieutenant-Governor of Bengal under this section—Bengal Government Circular 6, dated 11th January 1870, *Calcutta Gazette*, 12th January 1870, p. 35.

(2) for regulating the amount to be allowed for the costs and charges of such escort; and

(3) for the guidance of officers in all other matters connected with the enforcement of this Act;

and from time to time to alter and add to the rules so made.

19. All such rules, alterations, and additions shall be published in the official Gazette, and shall, from the date of such publication, be deemed to have the force of law.

Power to declare who shall be deemed officer in charge of jail.

20. The Local Government may also declare in each case what officer shall, for the purposes of this Act, be deemed to be 'the officer in charge of the jail.'

SCHEDULE A.

Court of

To the officer in charge of the (state name of jail)

You are hereby required to have the body of , now a prisoner in , under safe and sure conduct before the at on the day of next by of the clock in the forenoon of the same day, there to give testimony in a cause now pending before [or in a certain charge or prosecution now pending before against or as the case may be] and after the said shall then and there have given his testimony before the said , or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.

(Countersigned) C. D.

SCHEDULE B.

Court of

To the officer in charge of the (state name of jail)

You are hereby required to have the body of , now a prisoner in , under safe and sure conduct before the at on the day of next by of the clock in the forenoon of the same day, there to answer a charge now pending before , and, after such charge shall have been disposed of, or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.

(Countersigned) C. D.

ACT NO. VIII. OF 1870.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH MARCH 1870.

An Act for the prevention of the murder of Female Infants.

WHEREAS the murder of female infants is believed to be commonly committed in certain parts of British India ; and
Preamble. whereas it is necessary to make better provision for the prevention of the said offence ; It is hereby enacted as follows :—

1. If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may, with the previous sanction of the Governor-General of India in Council, declare, by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family, or persons.

The notification shall define the limits of such district, or shall specify the class, or family, or persons to whom such notification is to be deemed to apply.

2. When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section three, from time to time to make rules,* consistent with this Act, for all or any of the following purposes :—

(1.)—For making and maintaining registers of births, marriages, and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable ; and for making, from time to time, a census of such persons, or of any other persons residing within such district :

(2.)—For the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family, or persons, or for carrying out any of the provisions of this Act :

(3.)—For prescribing how and by whom information shall be given to the proper officers of all births, marriages, and deaths occurring or about to occur in such district, or in or among such class, family, or persons :

* See the N. W. P. Rules, *Gazette of India*, 11th February 1871, p. 76 : Oudh Rules, *ibid.*, 11th May 1872, p. 523 : Bombay Rules as to the Lewa and Karwa Kanbi Castes in the Ahmadábád and Kaira Districts, *Bombay Government Gazette*, Extraordinary, 15th April 1871, p. 453 ; 25th September 1873, p. 786.

- (4.)—For the regulation and limitation of expenses incurred by any person to whom such notification applies, on account of the celebration of marriage or of any ceremony or custom connected therewith :
- (5.)—For regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable :
- (6.)—For defining the duties of any officer or servant appointed to carry out any rule made under this section.

3. No rule or alteration made under section two shall take effect, until it shall have been confirmed by the Governor-General of India in Council, and published in the *Gazette of India* and also in the local Gazette.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

5. Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act : Provided that no person shall be punished twice for the same offence.

6. If it appears to the Magistrate of the district that any person to whom the notification mentioned in section one applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

The Magistrate of the district may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section three hundred and seven* of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section fifty hundred and thirty-six† of the same Code.

* See Act X. of 1882, s. 386.

† See Act X. of 1882, s. 488.

7. This Act shall, in the first instance, extend only to the North-Western Provinces, to the Panjáb, and to Oudh ;
Extent of Act. but the Governor-General of India in Council may by order extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India ; and the Governor of Madras in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal, may severally, by order, extend it to any part of the territories under their respective Governments.

Every order under this section made by the Governor-General of India in Council shall be published in the *Gazette of India*. Every other order made under this section shall be published in the local official Gazette.

ACT NO. XXVI. OF 1870.

THE PRISONS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 3RD OCTOBER 1870.

An Act to amend the law relating to prisons.

WHEREAS it is expedient to amend the law relating to prisons in the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, and British Burma, and to provide rules for the regulation of such prisons; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Prisons Act, 1870."

Local extent. It extends only to the territories respectively under the Government of the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and under the administration of the Chief Commissioners of Oudh, the Central Provinces, and British Burma.

2. [*Repealed by Act XII. of 1873.*]

Interpretation-clause.

3. In this Act—

"prison" means any gaol or penitentiary, and includes the airing-grounds or other grounds or buildings occupied for the use of the prison;

"Criminal prisoner." "criminal prisoner" means any prisoner charged with or convicted of a crime;

"Civil prisoner." and "civil prisoner" means any prisoner confined in a civil jail, or on the civil side of a jail.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. The Local Government shall provide for the prisoners in the territories under such Government, accommodation in a prison or prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

5. Whenever it appears to the Local Government that the number of prisoners in any prison is greater than can conveniently or safely be kept therein,

or whenever, from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made by such officer and in such manner as the Local Government from time to time directs, for the temporary shelter and safe custody of so many of the prisoners as cannot be conveniently or safely kept in the prison.

Prisoners for whom such temporary shelter is provided shall be subject to the same rules as if they were within the prison.

6. An Inspector-General of Prisons shall be appointed in the North-Western Provinces by the Local Government, in the Panjáb by the Local Government, and in Oudh, the Central Provinces, and British Burma, by the Governor-General in Council.

In each Inspector-General so appointed shall be vested (subject to the orders of the Local Government) the general control and superintendence of all prisons situate in the territories under such Government.

7. For every prison there shall be a superintendent, a medical officer (who may also be the superintendent), a gaoler, and such subordinate officers as the Local Government thinks necessary.

Subject to the orders of the Governor-General in Council, the Local Government may direct that for any specified prison there shall also be a deputy medical officer and a deputy gaoler.

Appointment of officers.

8. The Local Government shall appoint the superintendent and the medical officer and the deputy medical officer.

The superintendent (subject to the approval of the Inspector-General of Prisons) shall appoint the gaoler and deputy gaoler.

The superintendent shall also appoint the subordinate officers.

9. Every officer appointed under this Act shall receive such salary as (subject to the approval of the Governor-General of India in Council) the Local Government directs; and may be suspended or dismissed by the authority appointing him:

Salaries, suspension, and dismissal of officers. Provided that no gaoler or deputy gaoler shall be dismissed without the consent of the Inspector-General of Prisons.

Any subordinate officer dismissed under this section may appeal to the Inspector-General, whose orders on such appeal shall be final.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

10. All officers of a prison shall obey the directions of the superintendent: all subordinate officers shall perform such duties as may be directed by the gaoler with the sanction of the superintendent; and the duties of each subordinate officer shall be inserted in a book to be kept by him.

11. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner.

Officers to obey superintendent.
Officers not to sell or let to prisoners.

12. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison : nor, except so far as is expressly allowed by rules made under section fifty-four, shall he derive any benefit, directly or indirectly, from the sale of any article on behalf of the prison, or belonging to a prisoner.

Officers not to contract with prisoners ; nor to benefit by sales.

Superintendent.

13. Subject to the orders of the Inspector-General of Prisons, the superintendent shall—
manage the prison in all matters relating to discipline, labour, expenditure, punishment, and control :
correspond on all matters connected with the prison with and through the Inspector-General :
submit to the Inspector-General all bills of prison-expenditure with proper vouchers for audit :
report to the Inspector-General from time to time, as they occur, all escapes and recaptures, and all outbreaks of epidemic disease :
send to the Inspector-General returns of all prisoners sentenced to transportation :
periodically inspect all property of the Government in his charge, and report thereon to the Inspector-General :
and, generally, obey all rules made under section fifty-four for the guidance of the superintendent.

Duties of superintendent.

The superintendent shall also obey all orders respecting the prison given by the Magistrate of the District, or the Deputy Commissioner, as the case may be, and shall report to the Inspector-General all such orders and the action taken thereon.

Medical Officer.

14. The Local Government shall make rules as to each of the following matters :—
how often the medical officer shall visit the prison and see each prisoner :

the records to be made respecting sick prisoners :
periodical inspection of every part of the prison :
reports on its cleanliness, drainage, warmth, and ventilation :
reports on the provisions, water, clothing, and bedding supplied to the prisoners.

Medical officer to obey rules.

The medical officer shall obey such rules.

15. Whenever the medical officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the medical officer shall report the case in writing to the superintendent, together with such directions as the medical officer thinks proper.

To report special cases.

16. On the death of any prisoner, the medical officer shall forthwith record in writing the following particulars, namely,—
when the deceased was taken ill,

To make entries as to death of prisoners.

when the medical officer was first informed of the illness, the nature of the disease, when the prisoner died, and (in cases where a *post mortem* examination is made) an account of the appearances after death, together with any special remarks that appear to the medical officer to be required.

17. Where a deputy medical officer is appointed to a prison, he shall be competent to perform any duty required by this Act, or by any rule made hereunder, to be performed by the medical officer.

When there is no deputy medical officer, or when his services are subordinate medical officer. not available by reason of sickness or other cause, the Local Government may, by general or special order, appoint a subordinate medical officer to act as a substitute for the medical officer, and the subordinate medical officer so appointed shall perform all the duties of the medical officer.

Gaoler.

18. The gaoler shall reside in the prison, unless the superintendent permits him in writing to reside elsewhere. Residence of gaoler. The gaoler shall not, without the Inspector-General's sanction, be concerned in any other employment.

To deliver list of prisoners in punishment-cells. 19. The gaoler shall deliver to the medical officer daily a list of such prisoners as are confined in punishment-cells.

To give notice of death of prisoners. 20. Upon the death of a prisoner, the gaoler shall give immediate notice thereof to the superintendent.

To keep enumerated books and accounts. 21. The gaoler shall keep, or cause to be kept, the following records :—

- (1) a register of warrants ;
- (2) a book showing when each prisoner is to be released ;
- (3) a punishment-book for the entry of the punishments inflicted for prison-offences ;
- (4) a visitors' book for the entry of any observations made by visitors to the prison ;
- (5) a record of the money and other articles taken from prisoners ; and all such other records as may be prescribed by rules made under section fifty-four.

22. The gaoler shall be responsible for the safe custody of the records to be kept by him under section twenty-one, and also for the commitments and all other documents confided to his care. Responsible for safe custody of documents

23. The gaoler shall not be absent from the prison for a night without permission in writing from the superintendent ; but if absent without leave for a night from unavoidable necessity, he shall report the fact and the cause of it to the superintendent. Not to be absent without leave.

24. Where a deputy gaoler is appointed to a prison, he shall be competent to perform any duty required by this Act or by any rule made under section fifty-four to be performed by the gaoler.

Deputy gaoler.

Where there is no deputy gaoler, or where his services are not available by reason of sickness or other cause, the superintendent shall, when the gaoler is absent from the prison, or temporarily incapacitated, appoint an officer of the prison to act as his substitute during such absence or incapacity, and the substitute so appointed shall have all the powers and perform all the duties of the gaoler.

Subordinate Officers.

25. The officer acting as gate-porter, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search any person suspected of bringing in spirits or other prohibited articles into the prison, or of carrying out any property belonging to the prison, and, if any such articles or property be found, shall give immediate notice thereof to the gaoler.

Powers of gate-porter.

26. Subordinate officers shall not be absent from the prison without leave from the superintendent or from the gaoler, and before absenting themselves they shall leave their keys in the gaoler's office.

Subordinate officers not to be absent without leave.

CHAPTER IV.

ADMISSION, REMOVAL, AND DISCHARGE OF PRISONERS.

27. When a prisoner is first admitted, and whenever he afterwards enters the prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

Prisoners to be searched on entrance.

Every criminal prisoner shall also, as soon as possible after admission, be examined by the medical officer, who shall enter in a book, to be kept by the gaoler, a record of the state of the prisoner's health, and any observations which the medical officer thinks fit to add.

Medical examination of criminal prisoners.

28. All money or other effects in respect whereof no order of a competent Court has been made, and which may be brought into the prison by any criminal prisoner, or sent to the prison for his use, shall be placed in the custody of the gaoler.

Effects of criminal prisoners retained.

29. All prisoners, previously to being removed to any other prison, shall be examined by the medical officer.

Medical examination before removal and discharge of prisoners.

No prisoner shall be removed to any other prison unless the medical officer certifies that the prisoner is free from any illness rendering him unfit for removal.

No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the medical officer, such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

Requisitions of Act as to separation of prisoners.

30. The requisitions of this Act, with respect to the separation of prisoners, are as follows:—

(1.)—In a prison containing female prisoners as well as males, the women shall be imprisoned in separate buildings or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the men.

(2.)—In a prison where children under 12 years of age are confined, means shall be provided for separating them altogether from the other prisoners.

(3.)—Criminal prisoners before trial shall be kept apart from convicted prisoners.

(4.)—Civil prisoners shall be kept apart from criminal prisoners.

Rules as to separate confinement.

31. The Local Government shall have power to make rules—

(1) as to what cells only shall be used for the separate confinement of prisoners :

(2) as to the time during which prisoners not guilty of offences against prison-rules may be confined separately.

32. No cell shall be used for separate confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison.

Cells to be furnished with means of communication.

furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison.

33. Every prisoner under warrant or order for execution shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the gaoler, and all articles shall be taken from him which the gaoler deems it dangerous or inexpedient to leave in his possession.

Prisoners under sentence of death.

immediately on his arrival in the prison after sentence, be searched by, or by order of, the gaoler, and all articles shall be taken from him which the gaoler deems it dangerous or inexpedient to leave in his possession.

Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of an officer or guard.

CHAPTER VI.

FOOD, CLOTHING, AND BEDDING OF PRISONERS.

34. A civil prisoner shall be permitted to maintain himself, and

Civil prisoner may maintain himself.

to purchase, or receive from private sources at proper hours, food, clothing, bedding, or other necessaries, but subject to examination and to such rules as may be approved by the Inspector-General.

35. No part of any food, clothing, bedding, or other necessaries

Civil prisoner not to sell provisions.

belonging to any civil prisoner, shall be sold to any other prisoner; and any civil prisoner transgressing this regulation shall lose the privilege of purchasing food, or receiving it from private sources, for such time as the superintendent thinks proper.

36. Every civil prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the superintendent with such clothing and bedding as may be necessary.

When any such prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall be liable to pay to the superintendent on demand the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner shall be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

37. Civil prisoners may, with the superintendent's permission, work and follow their respective trades and professions.

Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements, or are maintained at the expense of the prison, shall be subject to a deduction, to be determined by the superintendent, for the use of implements and the cost of maintenance.

38. The medical officer shall, from time to time, examine the labouring prisoners while they are employed, and shall enter in his journal the name of any prisoner whose health he thinks likely to be injured by a continuance at hard labour, and thereupon such prisoner shall not again be employed at such labour until the medical officer certifies that he is fit for such employment.

But if the medical officer certifies that such prisoner may, without detriment to his health, be employed on some lighter kind of labour, it shall be lawful for the gaoler so to employ him.

39. Provision shall be made by the superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment.

The superintendent shall make rules as to the amount and nature of such employment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work, excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such prisoners.

CHAPTER VIII.

HEALTH OF PRISONERS.

40. The names of prisoners desiring to see the medical officer, or appearing out of health in mind or body, shall be reported by the officer attending them to the gaoler.

The gaoler shall, without delay, call the attention of the medical officer to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect the medical officer's written directions respecting alterations of the discipline or treatment of any such prisoner.

41. All directions given by the medical officer in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the medical officer himself or under his superintendence, shall be entered day by day in his journal, which shall have a separate column wherein entries shall be made by the gaoler, stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the gaoler thinks fit to make, and the date of the entry.

Infirmaries.

42. In every prison an infirmary or proper place for the reception of sick prisoners shall be provided

CHAPTER IX.

VISITS TO AND CORRESPONDENCE OF PRISONERS.

43. Due provision shall be made for the admission, at proper times, and under proper restrictions, into every prison, of persons with whom prisoners before trial may desire to communicate.

The Local Government shall also impose such restrictions upon the communication and correspondence of prisoners with their friends as it thinks necessary for the maintenance of good order and discipline.

44. The gaoler may demand the name and address of any visitor to a prisoner; and, when the gaoler has any ground for suspicion, may search visitors, or cause them to be searched, but the search shall not be in the presence of any prisoner or of another visitor.

In case of any such visitor refusing to be searched, the gaoler may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in his journal.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

45. Whoever, contrary to the regulations of the prison, brings, throws, or attempts by any means whatever to introduce into any prison, or any place provided under section five for the temporary shelter and safe custody of prisoners, any spirituous or fermented liquor, or tobacco, or intoxicating or poisonous drug,

and every officer of a prison who knowingly suffers any such liquor, tobacco, or drug to be sold or used in such prison or place contrary to such regulations,

suffering liquor, &c., to be sold or used in prison,

and whoever, contrary to such regulations, conveys, or attempts to convey, any letter or other article not allowed by such regulations into or out of any such prison or place,

carrying letters into and out of prison,

and whoever abets, within the meaning of the Indian Penal Code, any offence made punishable by this section,

shall, on conviction before a Magistrate, be liable to rigorous imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

46. The superintendent shall cause to be affixed, in a conspicuous place outside the prison or the place provided as aforesaid, a notice setting forth the penalties incurred by persons committing any offence under section forty-five.

Notice of penalties to be placed outside prison.

CHAPTER XI.

PRISON OFFENCES.

List of prison-offences.

47. The following acts are declared to be offences against prison-discipline:—

(1) wilful disobedience to the regulations of the prison by any prisoner ;

(2) assaults or use of criminal force by any prisoner ;

(3) insulting or threatening language by any prisoner to any officer or prisoner ;

(4) indecent or disorderly behaviour by any prisoner ;

(5) wilfully disabling himself from labour ;

(6) contumaciously refusing to work ;

(7) filing or cutting irons or bars ;

(8) idleness or negligence at work by any convicted criminal prisoner ;

(9) wilful mismanagement of work by any convicted criminal prisoner ;

(10) wilful damage to prison-property ;

(11) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

48. The superintendent may examine any person touching such offences, and determine thereupon, and punish such offenders—

(1) by imprisoning the offender in solitary confinement for any time not exceeding seven days ;

(2) by ordering the offender for any time not exceeding three days to close confinement, to be there kept upon a diet reduced to such extent as the Local Government shall prescribe ;

(3) by corporal punishment not exceeding thirty stripes of a ratan ; or

(4) where the offender is not sentenced to rigorous imprisonment, by hard labour for any time not exceeding seven days.

Superintendent's power to punish prison-offenders.

The gaoler shall enter in a separate book, called the punishment-book, a statement of the nature of any offence that has been punished under this section, with the addition of the name of the offender, the date of the offence, and the amount of punishment inflicted. Such statement shall be signed by the superintendent.

49. If any prisoner is guilty of repeated offences against prison-discipline, or is guilty of any offence against prison-discipline which the superintendent thinks is not adequately punishable under section forty-eight, the superintendent shall report the same to the Magistrate of the district or any Magistrate empowered to receive complaints without reference by the Magistrate of the district.

Such Magistrate shall have power to inquire upon oath and to determine concerning any matter so reported to him, and to sentence the offender to be punished

by confinement in a punishment-cell or in irons for any term not exceeding six months,

or by corporal punishment not exceeding thirty stripes of a ratan,

or by rigorous imprisonment for a term not exceeding six months, such term to be in addition to the term for which he is undergoing imprisonment.

Nothing in this or the last preceding section shall authorize the infliction of corporal punishment, or confinement in irons, on any female prisoner or any civil prisoner.

50. All corporal punishment within the prison shall be inflicted in the presence of the superintendent, subject to the law for the time being in force relating to the infliction of corporal punishment and the precautions to be taken in reference thereto.

51. Every gaoler and subordinate officer of a prison ill-treating any prisoner, or wilfully violating or neglecting any rule contained in this Act or made under section fifty-four, shall be liable, on conviction before the superintendent, to fine not exceeding one hundred rupees, or, on conviction before a Magistrate not being the superintendent, to fine not exceeding two hundred rupees, or rigorous imprisonment for a term not exceeding one month, or both.

Any fine imposed by the superintendent under this section may be recovered, either by deductions from the convicted officer's salary and allowances, or under the law for the time being in force for the recovery of fines.

No person shall, under this section, be punished twice for the same offence.

CHAPTER XII

MISCELLANEOUS.

52 Whenever the superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, the superintendent may so confine them,

53. Except in case of urgent necessity, no prisoner shall be put in irons or under mechanical restraint by the gaoler of his own authority, and notice thereof shall be forthwith given to the superintendent.

Except in case of urgent necessity, no prisoner shall be kept in irons or under mechanical restraint for more than twenty-four hours, without an order in writing from the superintendent specifying the cause thereof, and the time during which the prisoner is to be kept in irons or under mechanical restraint. Such order shall be kept by the gaoler as his warrant.

54. The Local Government may, from time to time, make rules consistent with this Act,

(1) for the government of prisons and for the guidance of all officers appointed hereunder :

(2) as to sales of articles on behalf of prisons or belonging to prisoners, and as to the commission receivable thereon :

(3) as to the food and clothing of criminal prisoners :

(4) for the employment and control of convicts within or without prisons, and for the guidance of the guards in charge of such convicts :

(5) for remission of sentences :

(6) for rewards for good conduct ; and

(7) for the appointment and guidance of visitors of prisons.

Copies of such rules, so far as they affect the government of prisons, shall be exhibited in some place to which all persons employed within a prison have access.*

55. All rules now in force relating to any of the matters mentioned in sections fourteen, thirty-one, thirty-nine, and fifty-four, shall, so far as such rules are consistent with this Act, be deemed to have been made under those sections respectively.

56. All or any of the powers and duties conferred and imposed by this Act on a superintendent may be exercised and performed by such other officer as the Local Government from time to time appoints in this behalf.

* Rules made under this section for the government of prisons and guidance of officers of prisons are contained in the *Jail Manual*, 1874.

ACT NO. I. OF 1871.

THE CATTLE-TRESPASS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH JANUARY 1871.

*An Act to consolidate and amend the law relating to Trespasses by Cattle.**

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows :—

CHAPTER I.—PRELIMINARY.

Short title. 1. This Act may be called "The Cattle-trespass Act, 1871."

Local extent. It extends to the whole of British India except the Presidency Towns and such districts or tracts of country as the Local Government, with the sanction of the Governor-General in Council, may exclude from its operation.†

Repeal of Acts. 2. The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts. References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III. of 1857 (*relating to trespasses by Cattle*), shall be deemed to be, respectively, established, appointed, and determined under this Act.

Interpretation-clause. 3. In this Act :—

'Officer of police' includes also village-watchman, and

'Cattle' includes also elephants, camels, buffalos, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids.

CHAPTER II.—POUNDS AND POUND-KEEPERS.

Establishment of pounds. 4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

* For rules see Bengal Police Circular, 29th December 1879 (Circular S).

† It has also been extended to the Haidarabad Assigned Districts (*Gazette of India*, 4th March 1871, p. 137) and to Mysore (*Gazette of India*, 6th April 1872, p. 377).

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Control of pounds. Rates of charge for feeding impounded cattle.

Appointment of pound-keepers.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper: Provided that, in the Presidency of Fort St George, the heads of villages, and, in the Presidency of Bombay, the police patils, or (where there are no police patils) the heads of villages, shall be *ex officio* the keepers of village pounds.

Ex officio pound keepers in Madras and Bombay.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Suspension or removal of pound keepers

Pound keepers may hold other offices

Pound keepers to be 'public servants.'

Any pound-keeper may hold simultaneously any other office under Government.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

Duties of Pound-keepers.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

To keep registers and furnish returns

To register seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register,

- (a) the number and description of the animals,
- (b) the day and hour on and at which they were so brought,
- (c) the name and residence of the seizer, and
- (d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

9 The pound-keeper shall take charge of, feed, and water the cattle until they are disposed of as hereinafter directed.

To take charge of and feed cattle.

CHAPTER III.—IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land, or the vendee or mortgagor of such crop or produce, or any part thereof,

Cattle damaging land.

may seize, or cause to be seized, any cattle trespassing on such land, and doing damage thereto, or to any crop or produce thereon, and take them or cause them to be taken without unnecessary delay to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such seizures.

Police to aid seizures.

11. Persons in charge of public roads, pleasure-grounds, plantations,

Cattle damaging public roads, canals, and embankments,

canals, drainage-works, embankments, and the like, and officers of police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works, or embankments, or found straying thereon,

and shall take them without unnecessary delay to the nearest pound.

12. For every head of cattle impounded as aforesaid, the pound-

Fines for cattle impounded.

keeper shall levy a fine* according to the following scale:—

Elephant	...	...	two rupees.
Camel or buffalo	...	...	eight annas.
Horse, mare, gelding, pony, colt, filly, mule,			
bull, bullock, cow, or heifer	...	...	four "
Calf, ass, or pig	...	...	two "
Ram, ewe, sheep, lamb, goat, or kid	...	...	one anna.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

A list of the fines and of the rates of charge for feeding and water-

List of fines and charges for feeding.

ing cattle shall be stuck up in a conspicuous place on or near to every pound.

CHAPTER IV.—DELIVERY OR SALE OF CATTLE.

13. If the owner of impounded cattle or his agent appear and

Procedure when owner claims the cattle, and pays fines and charges.

claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

14. If the cattle be not claimed within seven days from the date

Procedure if cattle be not claimed within a week.

of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an

officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions, as the Magistrate of the District by general or special order, from time to time directs:

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear, and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions, as are referred to in section fourteen.

The fines leviable, and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded.
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering, deducted under section sixteen, shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

- (a) the salaries allowed to pound-keepers under the orders of the Local Government.

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act ;

and the surplus (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges and to other purposes of public utility.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Officers and pound-keepers not to purchase cattle at sales under Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

Pound-keepers when not to release impounded cattle.

CHAPTER V.—COMPLAINTS OF ILLEGAL SEIZURES.

20. Any person whose cattle have been seized and detained under this Act may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District, or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

22. If the seizure be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure and detention, reasonable compensation,* not exceeding one hundred rupees, to be paid by the person who made the seizure, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle ;

and if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure.

Release of cattle.

23 The compensation, fines, and expenses mentioned in section twenty-two, may be recovered as if they were fines imposed by the Magistrate.

Recovery of compensation.

* See Act X. of 1882, s. 404.

CHAPTER VI.—PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under the Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

25. Any fine imposed for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

27. Any pound-keeper* releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. All fines recovered under section twenty-five, section twenty-six, or section twenty-seven, may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

Application of fines recovered under section 25, 26 or 27.

CHAPTER VII.—SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle, from suing for compensation in any competent Court.

Saving of right to sue for compensation.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

SCHEDULE.

(See section 2.)

Number and year.	Title of Act.
III. of 1857	An Act relating to trespasses by cattle.
V. of 1860	An Act to amend Act III. of 1857 (relating to trespasses by cattle).
XXII. of 1861	An Act to amend Act III. of 1857 (relating to trespasses by cattle)

ACT NO. IV. OF 1871.

THE CORONERS' ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH JANUARY 1871.

An Act to consolidate and amend the laws relating to Coroners.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency Towns; It is hereby enacted as follows:—

Preamble.

CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called "The Coroners' Act, 1871."*

2. [*Repealed by Act XII. of 1873.*]

CHAPTER II.—APPOINTMENT OF CORONERS.

3. Within the local limits of the ordinary original civil jurisdiction of each of the said High Courts, there shall be a Coroner. Such Coroners shall be called, respectively, the Coroner of Calcutta, the Coroner of Madras, and the Coroner of Bombay.

Coroners of Calcutta, Madras, and Bombay

4. Every such officer shall be appointed and may be suspended or removed by the Local Government.

Present Coroners.

Every person now holding such office shall be deemed to have been appointed under this Act.

Coroners to be 'public servants.'

5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

Power to hold other offices.

6. Any Coroner may hold simultaneously any other office under Government.

7. [*Repealed by Act X. of 1873.*]

CHAPTER III.—DUTIES AND POWERS OF CORONERS.

8. When a Coroner "has reason to believe"† that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person, being a prisoner, has died in prison, and that the body is lying within the place for which the Coroner is so appointed, the Coroner shall enquire into the cause of death.

* The second clause, relating to local extent, has been repealed by Act X. of 1881.

† The words quoted have been substituted for the words "is informed" by Act X. of 1881, s. 5.

Every such enquiry shall be deemed a judicial proceeding within the meaning of section one hundred and ninety-three of the Indian Penal Code.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is buried. Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

11. A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where the first was insufficient.

12. On receiving notice of any death mentioned in section eight, the Coroner shall summon five, seven, nine, eleven, thirteen, or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of enquiring when, how, and by what means the deceased came by his death.

Inquest may be on Sunday. Any inquest under this Act may be held on a Sunday.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires.

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the enquiry is conducted in secret, shall call in separately such as know anything concerning the death.

17. " It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall enquire of such circumstances and the cause of the death; and, if before or during the inquiry he is informed that any person, whether within or

without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

" Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five, or section one hundred and seventy-six of the Indian Penal Code, as the case may be."*

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of Act No. XV. of 1869 (*to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon*

18. The Coroner may direct the performance of a *post-mortem examination*, with or without any analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest; and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness; and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness, and then procure his signature thereto.

Any witness refusing so to sign shall be deemed to have committed an offence under section one hundred and eighty of the Indian Penal Code.

Every such deposition shall be subscribed by the Coroner.

" For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."†

21. The Coroner may adjourn the inquest from time to time, and from place to place.

* The clauses quoted have been substituted for those originally enacted by Act X. of 1881, s. 6.

† This clause has been added by Act X. of 1881, s. 7.

Whenever the inquest is adjourned, the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

The amount of such recognizances shall in each case be fixed by the Coroner.

22. When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

23. When the verdict is delivered, the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

24. Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

- (1) where, when, and before whom the inquisition is holden,
- (2) who the deceased is,
- (3) where his body lies,
- (4) the names of the jurors, and that they present the inquisition upon oath,
- (5) where, when, and by what means the deceased came by his death, and
- (6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

25. When the verdict is that the death has been caused by culpable homicide amounting to murder, or by culpable homicide not amounting to murder, or by a rash or negligent act not amounting to culpable homicide, the Coroner shall bind by recognizance any person knowing or declaring anything material touching such murder, homicide, or act to appear at the next criminal sessions at which the trial is to be, then and there be prosecute or give evidence against the party charged.

The Coroner shall certify and subscribe such recognizances, and shall, immediately after the inquest, deliver them, together with the inquisition and evidence, to the proper officer of the Court in which the trial is to be.

26. The Coroner shall also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person accused, and commit him to prison until he is thence discharged by due course of law, or, if he be already in prison, issue a detainer to the officer in charge of the jail in which he is.

27. In cases where the jury has found against any person a verdict of culpable homicide not amounting to murder, or of killing by a rash or negligent act not amounting to culpable homicide, the Coroner may, if he thinks fit, accept bail with sufficient sureties for the appearance of such person at the next criminal sessions, and thereupon such person, if in custody of any officer of the Coroner's Court, or in any gaol under a warrant of commitment issued by the Coroner, shall be discharged therefrom.

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the burial of the body on which the inquest has been taken.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

30. It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure trove or wrecks to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

Felo de se.
Deodands.

A *felo de se* shall not forfeit his goods.
Deodands are hereby abolished.

CHAPTER IV.—CORONERS' JURIES.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

32. The Coroner shall make out and sign a certificate, containing the name and surname, the residence and trade of every person so making default together with the amount of the fine so imposed, and the cause of such fine,

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the post-office, addressed as aforesaid and registered.

Service of copy of certificate.

33. Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

Levy of fine.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act.

Jurors not to be twice summoned within the year.

35. When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison and no prisoner confined therein shall be a juror on such inquest.

Jurors on inquest on prisoner.

CHAPTER V.—RIGHTS AND LIABILITIES OF CORONERS.

36. Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the Governor-General in Council.

Coroner's salary.

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury, and the like, shall be repaid to him by the Local Government.

Disbursements to be repaid.

38. Every Coroner may, from time to time, with the previous sanction of the Local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests.

Power to appoint deputy.

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him.

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Revocation of appointment.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Exemption from serving on juries.

39. No Coroner or Deputy Coroner shall be liable to serve as a juror.

40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

Privilege from arrest.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

Penalty for failure to comply with Act.

42. No proceeding for anything done under this Act, or for any Proceedings barred by failure to comply with its provisions, shall be commenced or prosecuted after tender of sufficient amends.*

FIRST SCHEDULE.—[*Repealed by Act XII. of 1873.*]

SECOND SCHEDULE.

Form of Inquisition.

AN INQUISITION taken at on the day of 187 , before E F, Coroner of , on view of the body of A B, then and there lying dead, upon the oath of G H, I J, K L, and M N, then and there duly sworn and charged to enquire when, how, and by what means the said A B came to his death.

We, the said jurors, find unanimously [or by a majority of] that the death of the said A B was caused, on or about the day of 187 , by [*here state the cause of death as in the following examples:—*

1. *Cases of homicide*]—a blow on the head with a stick inflicted on him by C D, under such circumstances that the act of C D was justifiable [or accidental] homicide.
—a stab on the heart with a knife inflicted on him by C D, under such circumstances that the act of C D was culpable homicide not amounting to murder [or culpable homicide amounting to murder, or a rash or negligent act not amounting to culpable homicide].
2. *Cases of accident*]—falling out of a boat into the river Hugli, whereby he was drowned.
—a kick from a horse which fractured his skull and ruptured blood-vessels in his head.
3. *Cases of suicide*]—shooting himself through the head with a pistol.
—arsenic, which he voluntarily administered to himself.
4. *Cases of sudden death by means unknown*]—disease of the heart.
—apoplexy.
—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands. E F, Coroner of

G H, I J, K L, M N, O P (jurors).

* ACT No. X. OF 1881.

THE CORONERS' ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH FEBRUARY 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS, under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars herein-after appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII. of 1867 (*an Act to incorporate the Police of the Town of Madras with the General Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows :—

Short title.

Commencement.

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Partial repeal of Act IV. of 1871, section 1.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor-General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras :

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X. of 1872 to extend to area excluded from Coroner's jurisdiction.

and all functions assigned to the Commissioner of Police.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and a Magistrate by those sections shall be discharged by the

Act IV. of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say :—

[See above, p. 104]

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say :—"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."*

* Sections 8 and 9 (which are omitted) have been repealed by Act X. of 1882.

ACT NO. V. OF 1871.

THE PRISONERS' ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH JANUARY 1871.

An Act to consolidate the laws relating to Prisoners confined by order of a Court.

FOR the purpose of consolidating the laws relating to prisoners confined by order of a Court ; It is hereby enacted as follows :—

I.—PRELIMINARY.

Short title. 1. This Act may be called "The Prisoners' Act, 1871."

Local extent. It extends to the whole of British India.*

2. [*Repealed by Act XII. of 1871.*]

II.—PRISONERS IN THE PRESIDENCY TOWNS.

3. All writs or warrants for the arrest or apprehension of any person, issued or awarded by the High Court in the exercise of its ordinary, extraordinary, or other criminal jurisdiction, shall be directed to and executed by any officer of police within the local limits of such jurisdiction.

4. The Local Government may appoint officers who shall have authority to receive and keep prisoners committed to their custody under the provisions of this Part.

All such officers appointed under any Act hereby repealed shall be deemed to be appointed under this Act.

Such officers shall be called, in Calcutta, the Superintendent of the Presidency Prison ; in Madras, the Superintendent of Prisons for the town of Madras ; and in Bombay,† by such title or respective titles as the Local Government from time to time directs.

Every such officer is hereinafter referred to as "the Superintendent."

5. The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner, or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant, or order by which such person has been committed, or until such person is discharged by due course of law.

* It has also been applied to the Haidarâbâd Assigned Districts.—Foreign Department Notification No. 67J, dated 5th May 1871.

† See *Bombay Government Gazette*, 4th December 1873, p. 999.

6. The Superintendent shall forthwith, after the execution of every

Superintendents to re-
turn writs, &c., after exe-
cution or discharge.

such writ, order, or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon, and signed by the Superintendent, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

7. Whenever any person is sentenced by the High Court in the

Delivery of persons sen-
tenced to imprisonment or
death.

exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

8. Whenever any person is sentenced by the High Court in the

Delivery for intermediate
custody of persons sen-
tenced to transportation or
penal servitude.

exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the imprisonment of such person shall have effect from such delivery.

9. Whenever any Judge of a High Court makes, under any Act

Order under Mutiny Act
for intermediate custody.

for the time being in force for punishing mutiny and desertion, and for the better payment of the Army and their quarters, an order for the intermediate custody of an offender sentenced by a Court Martial holden in India, the Judge shall order such offender to be detained for intermediate custody by the Superintendent.

10. Whenever any person is committed by the High Court, whether

Committals by High Court
in execution of a decree or
for contempt.

in execution of a decree or for contempt of Court, or other cause, he shall be taken by the officer to be appointed for that purpose by such Court, and shall be delivered to the Superintendent, together with a warrant of commitment.

11. Whenever any person is sentenced by a Magistrate of Police

Delivery of persons sen-
tenced by Police Magistrate.

for the town of Calcutta, Madras, or Bombay, to imprisonment, either absolutely or for default of payment of any fine imposed by any such Magistrate, or is committed to prison for failure to find security to keep the peace and to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with a warrant of the Court.

12. Every person committed by a Justice of the Peace or Magis-

Delivery of persons com-
mitted by Justice or Magis-
trate or Coroner for trial by
High Court.

trate or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing him to have the body of such person before the Court for trial, and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a Criminal Session of the said Court,

together with the warrant of commitment, in order that he may be dealt with according to law.

13. Pending any such enquiry as is mentioned in section eight of Act No. XXIII. of 1861 (*to amend Act VIII. of 1859*), which the High Court considers it necessary to make, the defendant may be delivered by the officer of the said Court to the Superintendent, subject to the provisions as to deposit of fees and as to release on security contained in the same section ;

and the Superintendent is hereby authorized and required to detain such defendant in safe custody until he is re-delivered to the officer of the Court for the purpose of being taken before the said Court in pursuance of an order of the said Court or of a Judge thereof, or until he is released by due course of law.

Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.

14. Every person arrested in pursuance of a writ, warrant, or order of the High Court, in the exercise of its original civil jurisdiction,

or in pursuance of a warrant of any Court established in Calcutta, Madras, or Bombay under Act No. IX. of 1850* (*for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay*),

or in pursuance of a warrant issued under section three of this Act, shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order was issued, awarded, or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction ;

and if such Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, shall, unless a Judge of the said Court otherwise orders, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law ;

and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

15. Any warrant of commitment under Regulation III. of 1818 of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II. of 1819 of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV. of 1827 of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others, for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV. of 1850 (*for the better Custody of State Prisoners*), and Act No. III. of 1858 (*to amend the Law relating to the arrest and detention of State Prisoners*).

III.—PRISONERS IN THE MOFUSSIL.

16. Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras, and Bombay, shall be competent to

Officers in charge of prisons may give effect to sentences of certain Courts.

* Superseded by Act XV. of 1882.

give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, or of the Governor-General in Council, or of any Local Government.

17. A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

18. Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this Part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

19. The Local Government may authorize the reception, detention, or imprisonment in any place under such Government, for the periods specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for any of the followings offences :—

counterfeiting coin,
uttering counterfeit coin,
murder,
culpable homicide not amounting to murder,
being a thug,
voluntarily causing grievous hurt,
administering poison,
kidnapping,
selling minors for purposes of prostitution,
rape,
robbery,
dacoity,
dacoity with murder,
robbery or dacoity with attempt to cause death or grievous hurt,
attempt to commit robbery or dacoity when armed with a deadly weapon,
making preparation to commit dacoity,
belonging to a gang of dacoits,
dishonest misappropriation of property,
breach of trust,
house-burning,
house-breaking,
forgery, and
theft of cattle ;

or for an attempt to commit any of the above offences,
 or for abetment, within the meaning of the Indian Penal Code, of suicide by burning or burying alive, or of any of the other offences above specified,

or for such other offences as the Governor-General in Council, from time to time, by order published in the *Gazette of India*, thinks fit to prescribe :

Provided that such sentences have been pronounced after trial before a tribunal in which an officer of Government, duly authorized in that behalf by such Native Prince or State, or by the Governor-General in Council, is one of the presiding Judges.

20. Every officer of Government so authorized as aforesaid shall forward with every prisoner a certificate of conviction, his conviction, and a copy of the proceedings held at the trial, that the same may be forthcoming for reference at the place where the sentence of imprisonment or transportation is carried into effect.

IV.—CONVICTS SENTENCED TO PENAL SERVITUDE.

21. Every person sentenced to be kept in penal servitude may during the term of the sentence, be confined in such prison within British India as the Governor-General in Council, by general order, from time to time, directs ;

and may, during such time, be kept to hard labour ;

and may, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with.

The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

22. All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude.

23. The Governor-General in Council may grant to any convict sentenced to be kept in penal servitude a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude and upon such conditions as to the Governor-General in Council seem fit.

The Governor-General in Council may at any time revoke or alter such license.

24. So long as such license continues in force and unrevoked, such Holder of license to be convict shall not be liable to imprisonment or allowed to go at large. penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

25. In case of the revocation of any such license as aforesaid, any Apprehension of convict where license revoked. Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

26. Such warrant may be executed by any officer to whom it may Execution of warrant. be directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace, or Magistrate, or other authority having jurisdiction in the place where the same is executed.

27. The convict, when apprehended under such warrant, shall be Apprehended convict to brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended.

Such Justice or Magistrate shall thereupon make out his warrant, under his hand and seal, for the re-commitment of the convict to the prison from which he was released by virtue of the said license.

28. Such convict shall be re-committed accordingly, and shall Re commitment. thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

29 If a license be granted under section twenty-three upon any Penalty for breach of condition of the license. condition specified therein, and the convict to whom the license is granted violates any such condition,

or goes beyond the limits specified in the license,

or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended,

he shall be liable, upon conviction, to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

V.—REMOVAL OF PRISONERS.

30. When any person is, or has been, sentenced to imprisonment

Removal from one jail to another in territories under Local Government.

by any Court, the Local Government, or (subject to its orders and under its control) the Inspector-General of Jails, may order his removal during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

31. Whenever it appears to the Local Government that any person,

Removal of lunatic prisoners.

detained or imprisoned under any order or sentence of any Magistrate or Court, is of unsound mind, such Government, by a warrant setting forth the grounds of belief that such person is of unsound mind, may order his removal to a lunatic asylum, or other fit place of safe custody, within the territories subject to the same Government, there to be kept and treated as the Local Government directs during the remainder of the term of imprisonment ordered by the sentence; or, if it be certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be detained under medical care or treatment, then until he is discharged according to law.

When it appears to the said Government that such prisoner has

Remand on recovery.

become of sound mind, the Local Government, by a warrant directed to the person having charge of the prisoner, shall remand the prisoner to the prison from which he was removed, if then still liable to be kept in custody, or, if not, shall order him to be discharged.

Discharge.

The provisions of section nine of Act XXXVI. of 1858 (*relating*

Act XXXVI. of 1858, section nine, applied to prisoners in lunatic asylum.

to Lunatic Asylums) shall apply to every person confined in a lunatic asylum under this section after the expiration of the term of imprisonment to which he has been sentenced; and the time during which he has been so confined shall be reckoned as part of such term.

32. When any person is, or has been, sentenced to imprisonment*

Government of India may order removal of prisoners from one prison to another.

by any Court, the Governor-General in Council may order his removal during the period prescribed for his imprisonment, from the prison in which he is confined to any other prison in British India.

VI.—MANAGEMENT OF TRANSPORTED CONVICTS.

“33. The Governor-General in Council may, from time to time,

Governor-General in Council to appoint places to which persons sentenced to transportation shall be sent.

appoint places within British India to which persons sentenced to transportation shall be sent: and the Local Government, or some officer duly authorized in this behalf by the Local

* No provision is here made for persons sentenced to penal servitude. As to soldiers sentenced by Court Martial, see the Mutiny Act, s. 31.

Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.”*

Local Government to direct removal of such persons to places appointed.

34. The Governor-General in Council may, from time to time, prescribe rules as to the following matters:—

the classification of convicts;
 their confinement, treatment, discipline, and employment;
 their punishment for misbehaviour, disorderly conduct, neglect, or disobedience; and
 the manner in which the proceeds (if any) of their employment shall be disposed of.

VII.—DISCHARGE OF CONVICTS.

35. Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance.

* This section has been substituted for the one originally enacted by Act IX. of 1882.

ACT NO. XXVII. OF 1871.

THE CRIMINAL TRIBES' ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH OCTOBER 1871.

An Act for the Registration of Criminal Tribes and Eunuchs.

Preamble. WHEREAS it is expedient to provide for the registration, surveillance, and control of certain criminal tribes and eunuchs; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Criminal Tribes' Act, 1871."

Local extent. This section and section twenty extend to the whole of British India; the rest of this Act extends only to the territories under the governments of the Lieutenant-Governors of the North-Western Provinces and the Panjāb, respectively, and under the administration of the Chief Commissioner of Oudh.

PART I.—CRIMINAL TRIBES.

2. If the Local Government has reason to believe that any tribe, gang, or class of persons, is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor-General in Council, and may request his permission to declare such tribe, gang, or class to be a criminal tribe.

3. The report shall state the reasons why such tribe, gang, or class is considered to be addicted to the systematic commission of non-bailable offences, and, as far as possible, the nature and the circumstances of the offences in which the members of the tribe are supposed to have been concerned; and shall describe the manner in which it is proposed that such tribe, gang, or class shall earn its living when the provisions hereinafter contained have been applied to it.

4. If such tribe, gang, or class has no fixed place of residence, the report shall state whether such tribe, gang, or class follows any lawful occupation, and whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang, or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and the report shall also specify the place of residence in which such wandering tribe, gang, or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.

5. If, upon the consideration of any such report, the Governor-General in Council is satisfied that the tribe, gang, or class to which it relates ought to be declared criminal, and that the means by which it is proposed that such

tribe, gang, or class shall earn its living, are adequate, he may authorize the Local Government to publish in the local Gazette a notification declaring that such tribe, gang, or class is a criminal tribe, and thereupon the provisions of this Act shall become applicable to such tribe, gang, or class.

6. No Court of justice shall question the validity of any such notification on the ground that the provisions herebefore contained, or any of them, have not been complied with, or entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang, or class specified therein.

7. When the notification mentioned in section five has been published, the Local Government may direct the Magistrate of any district in which such tribe, gang, or class, or any part thereof, is at the time resident, to make a register of the members of such tribe, gang, or class, or of any part thereof.

The declaration of the Local Government that any such tribe, gang, or class, or any part of it, is resident in any district, shall be conclusive proof of such residence.

8. Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of such tribe, gang, or class, or of such portion thereof as is directed to be registered, to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register.

9. Any member of such tribe, gang, or class who, without lawful excuse, the burthen of proving which shall lie upon him,

shall fail to appear according to such notice,

or who shall intentionally omit to furnish such information,

or who shall furnish, as true, information on the subject which he knows or has reason to believe to be false,

shall be deemed guilty of an offence under the first parts of section one hundred and seventy-four, or one hundred and seventy-six, or one hundred and seventy-seven of the Indian Penal Code, respectively, as the case may be.

10. The register, when made, shall be kept by the District Superintendent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure.

11. No alteration shall be made in such register except by or by order of the said Magistrate, and he shall write his initials against every such alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby.

12 Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the said Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order of entry, retention, or erasure, passed by the said Magistrate on any such complaint, either on appeal by the person registered or proposed to be registered, or otherwise.

13. Any tribe, gang, or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the Local Government.

14 Any tribe, gang, or class, which has been declared to be criminal, or any part thereof, may, by order of the Local Government, be removed to any other place of residence.

15. No tribe, gang, or class, shall be settled or removed under the provisions of this Act until such arrangements as the Local Government shall, with the concurrence of the Governor-General in Council, consider suitable, have been made for enabling such tribe, gang, or class, or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be settled or removed.

16 When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the district to which such persons are removed; and the Magistrate of the said district, and the Commissioner of the division in which it is situated, shall thereupon be empowered to exercise respectively the powers provided in sections eleven and twelve.

17. The Local Government may, with the sanction of the Governor-General in Council, place any tribe, gang, or class, which has been declared to be criminal, or any part thereof, in a reformatory settlement.

18. The Local Government may, with the previous consent of the Governor-General in Council, make rules to prescribe—

(1) the form in which the register shall be made by the said Magistrate;

(2) the mode in which the said Magistrate shall publish the notice prescribed in section eight, and the means by which the persons whom it concerns, and the headmen, village-watchmen, and landowners or occupiers of the village in which such persons reside, shall be informed of its publication;

(3) the mode in which the notice prescribed in section eleven shall be given;

(4) the limits within which persons whose names are on the register shall reside ;

(5) conditions as to holding passes, under which such persons may be permitted to leave the said limits ;

(6) conditions to be inserted in any such pass as to

(a) the places where the holder of the pass may go or reside ;

(b) the officers before whom, from time to time, he shall be bound to present himself ;

(c) and the time during which he may absent himself ;

(7) conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate or persons authorized by him that the persons whose names are on the register are actually present at given times within the said limits ,

(8) the inspection of the residences and villages of any such tribe, gang, or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave ;

(9) the terms upon which registered persons may be discharged from the operation of this Act ;

(10) the mode in which criminal tribes shall be settled and removed ;

(11) the control and supervision of reformatory settlements ;

(12) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid and the disposal for the benefit of such persons, of the surplus proceeds of their labour after defraying the whole or such part of the expenses of their supervision and control as to the Local Government shall seem fit ,

(13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted ; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove .

(14) and generally to carry out the purposes of this Act.*

19. Any person violating any of the rules made under section

Penalties for breach of rules. eighteen shall be punished with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments ; and, on any second conviction for a breach of any of the said rules, with rigorous imprisonment which may extend to one year, or with fine, or with whipping to be inflicted in the manner prescribed by any law in force for the time being in relation to whipping, or with all or any two of those punishments.

20. Any person registered under the provisions of this Act, who

Arrest of registered persons found beyond prescribed limits. is found in any part of British India, beyond the limits so prescribed for his residence, without such pass as may be required by the said rules, or in a place or at a time not permitted by the conditions of his pass,

* N. W. Provinces rules, *N. W. Province's Gazette*, 21st March 1874, p. 701 : *Panjab rules*, *Panjab Government Gazette*, 13th February 1873, p. 99.

or who escapes from a reformatory settlement, may be arrested without warrant by any police officer or village-watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as the case may be), there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section. Provided that an order from the Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

21. It shall be the duty of every village-headman and village-

Duties of village head- watchman in a village in which any persons men, village watchmen &c. belonging to a tribe, class, or gang which has been declared criminal, and of every owner or occupier of land on which any such persons reside, to give the earliest information in his power at the nearest police-station of

(1) the failure of any such person to appear and give information as directed in section eight,

(2) the departure of any such person from such village or from such land (as the case may be).

And it shall be the duty of every village-headman and village-watchman in a village and of every owner or occupier of land, to give the earliest information in his power at the nearest police-station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class, or gang.

22 Any village-headman, village-watchman, owner, or occupier of

Penalty for breach of land who shall fail to comply with the require- such duties. ments of section twenty-one, shall be deemed to have committed an offence under the first part of section one hundred and seventy-six of the Indian Penal Code.

23. [*Repealed by Act XII. of 1876*]

PART II.—EUNUCHS.

24 The Local Government shall cause the following registers to

Registers of eunuchs and be made and kept up by such officer as, from their property. time to time, it appoints in this behalf:—

(a) a register of the names and residences of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section three hundred and seventy-seven of the Indian Penal Code, or of abetting the commission of any of the said offences; and

(b) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

The term 'eunuch' shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.

25. Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently, may complain to the said officer, who shall enter such person's name, or erase it, or retain it, as he sees fit.

Every order for erasure of such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

26. Any eunuch so registered, who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place, or who dances or plays music, or takes part in any public exhibition, in a public street or place, or for hire in a private house, or dancing in public, or for hire,

may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

27. Any eunuch so registered, who has in his charge, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

28. The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section twenty-seven may be employed in defraying the cost of such arrangements.

The Local Government may direct out of what local or municipal fund so much of the cost of such arrangements as is not met by the fine imposed shall be defrayed.

29. No eunuch so registered shall be capable—

- (a) of being or acting as guardian to any minor,
- (b) of making a gift,
- (c) of making a will, or
- (d) of adopting a son.

30. Any officer authorized by the Local Government in this behalf

Power to require information as to registered eunuch's property.

may, from time to time, require any eunuch so registered to furnish information as to all property, whether moveable or immoveable, of or to which he is possessed or entitled, or which is held in trust for him.

Any such eunuch intentionally omitting to furnish such information,

Penalty for refusing such information.

or furnishing, as true, information on the subject which he knows or has reason to believe, to be false, shall be deemed to have committed an offence under section one hundred and seventy-six or one hundred and seventy-seven of the Indian Penal Code, as the case may be.

31. The Local Government may, with the previous sanction of the

Rules for making and keeping up registers of eunuchs.

Governor-General in Council, make rules for the making and keeping up and charge of registers made under this Part of the Act.*

* N. W. Provinces rules, *N. W. Provinces Gazette*, 20th July 1872, p. 845. Punjab rules, *Punjab Government Gazette*, 12th June 1873, p. 331.

ACT NO. I. OF 1872.

THE INDIAN EVIDENCE ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 15TH MARCH 1872.

WHEREAS it is expedient to consolidate, define, and amend the
Preamble. Law of Evidence; It is hereby enacted as follows:—

PART I.—RELEVANCY OF FACTS.

CHAPTER I - PRELIMINARY.

Short title.

1. This Act may be called "The Indian Evidence Act, 1872".

Extent.

It extends to the whole of British India,* and applies to all judicial proceedings in or before any Court, including Courts Martial† but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator; and it shall come into force on the first day of September 1872.

Commencement of Act.

Repeal of enactments.

2. On and from that day the following laws shall be repealed. —

(1.) All rules of evidence not contained* in any Statute, Act, or Regulation in force in any part of British India :

(2.) All such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils' Act, 1861'; in so far as they relate to any matter herein provided for; and

(3.) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

* It has been applied to the Hyderabad Assigned Districts and the Cantonment of Sikandarabad.— Foreign Department, No. 80J, dated May 2, 1872.

† This is repealed, as to European Courts Martial, by the Mutiny Act: "No Court Martial shall, in respect of the conduct of its proceeding, or the reception or rejection of evidence, be subject to the provisions of the 'Indian Evidence Act, 1872,' or any Act of any Legislature, other than the Parliament of the United Kingdom."—33 Vic. c. 7, s. 101.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

“ Court ” includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

“ Fact.” “ Fact ” means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

“ Relevant.”

“ Facts in issue.” The expression “ facts in issue ” means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation :— Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“ Document ” means any matter expressed or described upon any substance by means of letters, figures, or marks,

“ Document.”

or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document :

Words printed, lithographed, or photographed, are documents :

A map or plan is a document :

An inscription on a metal plate or stone is a document :

A caricature is a document.

"Evidence."

"Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ;
such statements are called oral evidence :

(2) all documents produced for the inspection of the Court ;
such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Disproved."

"Not proved."

A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it :

"May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved :

"Shall presume "

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

"Conclusive proof."

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club ;

A's causing B's death by such beating ;

A's intention to cause B's death.

(b.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Pro-

6 Facts which, though not in issue, are so connected with a fact

Relevancy of facts forming in issue as to form part of the same transaction, part of same transaction. are relevant, whether they occurred at the same time and place, or at different times and places.

Illustrations.

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goods are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or

Facts which are occasion, otherwise, of relevant facts, or facts in issue, or cause, or effect of facts in issue which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a) The question is whether A robbed B.

Facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct. **8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.**

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a.) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence, 'The police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, 'I advise you not to trust A, for he owes B 10,000 rupees,' and that A went away without making any answer, are relevant facts.

(h.) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

(k.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any claimant, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant

Facts necessary to explain or introduce relevant facts.

fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(a.) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A.

C, on leaving A's service, says to A, 'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, 'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot, and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more

persons have conspired together to commit an offence or an actionable wrong, any thing said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant—

(a.) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(b.) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind, or body, or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b.) A is accused of fraudulently delivering to another person a piece of counterfeit coin, which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(c.) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repented the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

- 15.** When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned is relevant.

Facts bearing on question whether act was accidental or intentional.

Illustrations.

(a.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance-office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to B was not accidental.

- 16.** When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is a relevant fact.

Existence of course of business when relevant.

(a.) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions.

- 17.** An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

- 18.** Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

- (1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by party interested in subject-matter;

by person from whom interest derived.

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the

Admissions by persons whose position must be proved as against party to suit

suit, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.

A says to B, 'Go and ask C, C knows all about it.' C's statement is an admission.

21. Admissions are relevant, and may be proved as against the

Proof of admissions against persons making them, and by or on their behalf.

person who makes them, or his representative in interest;* but they cannot be proved by or on behalf of the person who makes them, or by his representative in interest, except in the following cases:

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32

(2.) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it, and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admissions as to the contents of a document are not

When oral admissions as to contents of documents are relevant. relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such

document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant, if it is made either

Admissions in civil cases when relevant. upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation. Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a

Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding. criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused

person, proceeding from a person in authority,* and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved. 25. No confession made to a police-officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody

Confession by accused while in custody of police not to be proved against him. of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. Provided that, when any fact is deposed to as discovered in con-

How much of information received from accused may be proved.

whether it amounts to fact thereby discovered,

sequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, a confession or not, as relates distinctly to the may be proved.

Confession made after removal of impression caused by inducement, threat, or promise, relevant.

23. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise, has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. When more persons than one are being tried jointly for the

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, 'A and I murdered C.'

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted,

Admissions not conclusive proof, but may be top

but they may operate as estoppels under the provisions hereinafter contained.

*Statements by persons who cannot be called as witnesses.***32 Statements,** written or verbal, of relevant facts, made by a

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1.) When the statement is made by a person as to the cause of

When it relates to cause of death;

his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

* 10 Bomb., 499, 19 Suth. W. R., Cr., 23.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind; or of a document used in commerce, written or signed by him; or of the date of a letter or other document usually dated, written, or signed by him.

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him, or would have exposed him, to a criminal prosecution or to a suit for damages.

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

(5.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons as to whose relationship by blood, marriage, or adoption, the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family-portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7.) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a.) The question is whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

* See s. 2, Act XVIII., 1872.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts

(b.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day, is relevant.

(h.) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact

(i.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banyan in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m.) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or before

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.*

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under Special Circumstances.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the gazette of any local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

*How much of a statement is to be proved.***39.** When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers, as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

*Judgments of Courts of Justice when relevant.***40.** The existence of any judgment, order, or decree, which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41. A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of certain judgments in probate, &c., jurisdiction.

Such judgment, order, or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order, or decree* declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree* declared that it had ceased or should cease ;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order, or decree* declares that it had been or should be his property.

42. Judgments, orders, or decrees, other than those mentioned in

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

section 41, are relevant if they relate to matters of a public nature relevant to the inquiry ; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

* See s. 3, Act XVIII., 1872.

† 22 *Suth. W. R.*, C. B., 365.

43. Judgments, orders, or decrees, other than those mentioned

Judgments, &c., other than those mentioned in sections 40-42, when relevant.

in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

44. Any party to a suit or other proceeding may show that any

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

judgment, order, or decree, which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was

obtained by fraud or collusion.

Opinions of Third Persons, when relevant.

45. When the Court has to form an opinion upon a point of foreign

law, or of science or art, or as to identity of handwriting, the opinions upon that point of

persons specially skilled in such foreign law, science, or art, or in questions as to identity of handwriting,* are relevant facts.

Such persons are called experts.

Illustrations.

(a.) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

46. Facts, not otherwise relevant, are relevant if they support or

Facts bearing upon opinions of experts.

are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a.) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by

Opinion as to handwriting when relevant. whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A, are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of

Opinion as to existence of right or custom when relevant. any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence, if it existed, are relevant.

Explanation.—The expression, general custom or right, includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well, is a general right within the meaning of this section.

49. When the Court has to form an opinion as to—

Opinions as to usages, tenets, &c., when relevant. the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

50. When the Court has to form an opinion as to the relationship

Opinion on relationship when relevant. of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has

special means of knowledge on the subject, is a relevant fact : Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.

Illustrations.

(a.) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant, the grounds of opinion, when grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed, irrelevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant ; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections 52, 53, 54, and 55, the word ‘character’ includes both reputation and disposition ; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation and disposition were shown.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts :—

(1.) All laws or rules having the force of law, now or heretofore in force or hereafter to be in force, in any part of British India :

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3.) Articles of War for Her Majesty's Army or Navy :

(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto :

Explanation.—The word 'Parliament,' in clauses (2) and (4), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland ;

2. The Parliament of Great Britain ;

3. The Parliament of England ;

4. The Parliament of Scotland ; and

5. The Parliament of Ireland :

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6.) All seals of which English Courts take judicial notice ; the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any local Government in Council : the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public ; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any local Government :

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown :

(9.) The divisions of time, the geographical divisions of the world, and public festivals, facts, and holidays notified in the official gazette :

(10.) The territories under the dominion of the British Crown :

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons :

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it :

(13.) The rule of the road on land or at sea.*

In all these cases, and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

* See s. 5, Act XVIII, 1872.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process as in the case of printing, lithography, or photo-

graphy, each is primary evidence of the contents of the rest : but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1.) Certified copies given under the provisions hereinafter contained ;
- (2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;
- (3.) Copies made from or compared with the original ;
- (4.) Counterpart of documents as against the parties who did not execute them ;
- (5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying-machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying-machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :—

- (a) when the original is shown or appears to be in the possession or power
 - of the person against whom the document is sought to be proved, or
 - of any person out reach of, or not subject to, the process of the Court, or
 - of any person legally bound to produce it,
 and when, after the notice mentioned in section 66, such person does not produce it ;
- (b) when the existence, condition, or contents of the original, have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest ;

(c.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;

(d.) When the original is of such a nature as not to be easily moveable ;

(e.) When the original is a public document within the meaning of section 74 ;

(f.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;

(g.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c), and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred

Rules as to notice to produce. to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader,* such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1.) When the document to be proved is itself a notice ;

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it ;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

(4.) When the adverse party or his agent has the original in Court ;

(5.) When the adverse party or his agent has admitted the loss of the document ;

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court

67. If a document is alleged to be signed or to have been written

Proof of signature and handwriting of person alleged to have signed or written document produced. wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

68. If a document is required by law to be attested, it shall not

Proof of execution of document required by law to be attested. be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and, subject to the process of the Court, capable of giving evidence.

69. If no such attesting witness can be found, or if the document

Proof where no attesting witness found. purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

70. The admission of a party to an attested document of its

Admission of execution by party to attested document. execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. If the attesting witness denies or does

Proof when attesting witness denies the execution. not recollect the execution of the document, its execution may be proved by other evidence.

72. An attested document not required

Proof of document not required by law to be attested. by law to be attested may be proved as if it was unattested.

73. In order to ascertain whether a signature, writing, or seal is

Comparison of signature, writing, or seal, with others admitted or proved. that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

Public Documents.

74. The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document,

Certified copies of public documents. which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at

the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies, so certified, shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents

Proof of documents by
production of certified co-
pies.

of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official
documents.

78. The following public documents may be proved as follows:—

(1.) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any local Government or any department of any local Government,

by the records of the departments, certified by the head of those departments respectively,

or by any document purporting to be printed by order of any such Government;

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government;

(3.) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer;

(4.) The Acts of the Executive or the proceedings of the Legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council;

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

79. The Court shall presume every document purporting to be a

Presumption as to genu-
ineness of certified copies.

certificate, certified copy, or other document, which is by law declared to be admissible as

evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine : Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court, pur-

Presumption as to document produced as record of evidence.

porting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true ; and that such evidence, statement, or confession was duly taken.

81. The Court shall presume the genuineness of every document

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any local Government, or of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law, and is produced from proper custody.

82. When any document is produced before any Court, purporting

Presumption as to document admissible in England without proof of seal or signature.

to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims ;

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be

Presumption as to maps or plans made by authority of Government.

made by the authority of Government were so made, and are accurate ; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c.) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1. When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

* See s. 7, Act XVIII., 1872.

92. When the terms of any such contract, grant, or other disposition

Exclusion of evidence of oral agreement. tion of property, or any matter required by law to be reduced to the form of a document, have

been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso 1.—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso 5.—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a.) A policy of insurance is effected on goods 'in ships from Calcutta to London.' The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c.) An estate, called 'the Rampur tea estate,' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a document is, on its face,

Exclusion of evidence to explain or amend ambiguous document.

ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a.) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and,

Exclusion of evidence against application of document to existing facts.

when it applies accurately to existing facts evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, 'my estate at Rámpur containing 100 bighás.' A has an estate at Rámpur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is

Evidence as to document in unmeaning reference to existing facts.

unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have

Evidence as to application of language which can apply to one only of several persons.

been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(a.) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sindh was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations, and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

On whom burden of proof lies.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that

Burden of proof as to person who wishes the Court to believe in its particular fact. existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in

Burden of proving fact order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. to be proved to make evidence admissible.

Illustrations.

(a.) A wishes to prove a dying declaration by B. A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving

Burden of proving that ing the existence of circumstances bringing the case within any of the general exceptions in the case of accused comes within exceptions. Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c.) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Provided that when* the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to* the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. When the question is whether any person is owner of any-

Burden of proof as to ownership.

thing of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Proof of good faith in transactions where one party is in relation of active confidence.

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Birth during marriage, conclusive proof of legitimacy.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a.) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b.) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c.) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d.) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(e.) That judicial and official acts have been regularly performed;

(f.) That the common course of business has been followed in particular cases;

(g.) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h.) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i.) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

As to illustration (c)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

As to illustration (e)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (f)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (g)—The question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

As to illustration (h)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

* See, for example, *Gazette of India*, 4th January 1873, p. 2.

As to illustration (b) — A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked ;

As to illustration (i) A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property, and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER XI—OF WITNESSES.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in

Dumb witnesses. any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be

Parties to civil suit, and their wives or husbands.

Husband or wife of person under criminal trial.

competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. No Judge or Magistrate shall, except upon the special order

Judges and Magistrates.

of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is a witness before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. No person who is or has been married shall be compelled to

Communications during marriage.

disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from

Evidence as to affairs of State.

unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communica-

Official communications.

tions made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or police-officer shall be compelled to say whence

Information as to commission of offences.

he got any information as to the commission of any offence.

126. No barrister, attorney, pleader, or vakil, shall, at any time, be

Professional communications.

permitted unless with his client's express consent, to disclose any communication made to

him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal* purpose ;

(2) Any fact observed by any barrister, pleader, attorney, or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,* attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation --The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney, 'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney, 'I wish to obtain possession of property by the use of a forged deed, on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and

Section 126 to apply to the clerks or servants of barristers, pleaders, interpreters, &c. attorneys, and vakils.

128. If any party to a suit gives evidence therein at his own

Privilege not waived by volunteering evidence. instance or otherwise he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126 ; and if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any con-

Confidential communications with legal advisers. fidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

* See s. 10, Act XVIII., 1872.

130. No witness who is not a party to a suit shall be compelled to

Production of title-deeds of witness not a party. produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

131. No one shall be compelled to produce documents in his

Production of documents which another person, having possession, could refuse to produce possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question

Witness not excused from answering on ground that answer will criminate. as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate, such witness, or that it will expose or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled

Provide to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an

Accomplice. accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined

Order of production and examination of witnesses shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

136. When either party proposes to give evidence of any fact, the

Judge to decide as to admissibility of evidence. Judge may ask the party proposing to give the evidence, in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence, if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D), which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Re-examination.

**Order of examinations.
Direction of re-examination.**

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Cross-examination of person called to produce a document.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

Leading questions.

142. Leading questions must not, if objected to by the adverse

When they must not be asked.

party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

144. Any witness

Evidence as to matters in writing.

may be asked, whilst under examination, whether any contract, grant, or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D, 'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements

Cross-examination as to previous statements in writing.

made by him in writing, or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being

proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the

Questions lawful in cross-examination.

questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity;

(2) to discover who he is, and what is his position in life; or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend, directly or indirectly, to criminate him or might expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit

When witness to be compelled to answer.

or proceeding, the provisions of section 132 shall apply thereto.

148. If any such

Court to decide when question shall be asked, and when witness compelled to answer.

question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and

may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4.) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

149. No such question as is referred to in section 148 ought to be

asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked

without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court, or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

151. The Court may forbid any questions or inquiries which it

regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which appears to it to

be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked, and has answered, any ques-

Exclusion of evidence to contradict answers to questions testing veracity.

tion which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood-feud with the family of B, against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls

Question by party to his own witness. a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. The credit of a witness may be impeached in the following

Impeaching credit of witness. ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his

belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives

Questions tending to corroborate evidence of relevant fact, admissible.

evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former

Former statements of witness may be proved to corroborate later testimony as to same fact.

statement made by such witness relating to the same fact, at or about the the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statement, relevant under section 32 or 33,

What matters may be proved in connection with proved statement relevant under section 32 or 33.

is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory

Refreshing memory.

by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any

When witness may use copy of document to refresh memory.

document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such

Testimony to facts stated in document mentioned in section 159.

document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last

Recd. of adverse party as to writing used to refresh memory.

preceding sections must be produced and shown to the adverse party, if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

162. A witness summoned to produce a document shall, if it is

Production of documents.

in his possession or power, bring it to Court, notwithstanding any objection which there may

be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be

Translation of documents.

translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter

disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

163. When a party calls for a document which he has given the

Giving, as evidence, of document called for and produced on notice.

other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it

as evidence, if the party producing it requires him to do so.

164. When a party refuses to produce a document which he has

Using, as evidence, of document, production of which was refused on notice.

had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party, or the order of the Court.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury, or with assessors, the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.
ENACTMENTS REPEALED.
(See section 2.)

Number and year.	TITLE.	Extent of repeal.
Stat 26, Geo III., cap. 57	For the further regulation of the trial of persons accused of certain offences committed in the East Indies, for amending so much of an Act, made in the fourth year of the reign of his present Majesty (intituled 'An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies'), as requires the servants of the East India Company to deliver inventories of their estates and effects, for rendering the laws more effectual against persons unlawfully resorting to the East Indies, and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India	Section 38, so far as it relates to Courts of Justice in the East Indies
Stat 14 & 15 Vic., cap. 99	To amend the Law of Evidence ..	Section 11, and so much of section 19 as relates to British India.
Act XV. of 1852 ..	To amend the Law of Evidence	So much as has not been heretofore repealed.
Act XIX. of 1853 ..	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855 ..	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861..	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
Act I. of 1868	The General Clauses Act, 1868 ..	Sections 7 and 8.

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ACT NO. X. OF 1873.

THE INDIAN OATHS' ACT.

RECEIVED THE G. G.'S ASSENT ON THE 8TH APRIL 1873.

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations. It is hereby enacted as follows : —

I.—Preliminary

1. This Act may be called "The Indian Oaths' Act, 1873."

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

2 [*Repealed by Act XII of 1873*]

3. Nothing herein contained applies to proceedings before Courts-Martial, or to oaths, affirmations, or declarations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor General in Council has not power to repeal.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law :—

(a) All Courts and persons having by law or consent of parties authority to receive evidence :

(b) The Commanding Officer of any military station occupied by troops in the service of Her Majesty ; provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

5. Oaths or affirmations shall be made by the following persons :—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having,

by law or consent of parties, authority to examine such persons or to receive evidence :

interpreters: (b) interpreters of questions put to, and evidence given by, witnesses, and jurors. (c) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter, or juror, is a Hindú or Muhammadan,

or has an objection to making an oath, he shall, instead of making an oath, make an affirmation.

In every other case, the witness, interpreter, or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.*

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon, and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

8. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to

* *Calcutta Gazette*, 20th August 1873, p. 984. *North-Western Provinces Gazette*, 3rd May 1873, p. 604. *Panjab Gazette*, 15th May 1873, Part III., p. 209.

any person to administer it and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

12. If the party or witness refuses to make the oath or solemn

Procedure in case of refusal to make oath.

affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

13. No omission* to take any oath or make any affirmation, no

Proceedings and evidence not invalidated by omission of oath or irregularity.

substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

14. Every person giving evidence on any subject before any Court

Persons giving evidence bound to state the truth.

or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.†

Amendment of Act XLV. of 1860, sections 178 and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

16. Subject to the provisions of sections three and five, no person

Official oaths abolished.

appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath or to make or subscribe any affirmation or declaration whatever.

* This "includes any omission, and is not limited to accidental or negligent omissions." *Reg. v. Sowa Bhogta*, 14 Beng. 294.

† See Act XLV. of 1860, s. 191.

ACT NO. IX. OF 1874.

THE EUROPEAN VAGRANCY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH APRIL 1874.

*An Act to consolidate and amend the Law relating
to European Vagrancy.*

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India: It is hereby enacted as follows:—

PART I.—PRELIMINARY.

Short title. 1. This Act may be called ‘ The European Vagrancy Act, 1874.’

Local extent. It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement. And it shall come into force at once: Provided that sections four to sixteen (both inclusive), nineteen, twenty, twenty-four, and twenty-nine, shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship, or Chief Commissionership in British India, until such day or respective days as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Repeal of Acts. 2 Acts No. XXI. of 1869 (*to provide against European Vagrancy*) and No. XXVIII. of 1871 (*to amend the European Vagrancy Act, 1869*) are hereby repealed.

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed, and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed, and granted under this Act.

Interpretation-clause. 3. In this Act—

“ Person of European extraction ” “ Person of European extraction ” includes—

(a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony,

(b) the sons and grandsons of such persons, but does not include persons commonly called Eurasians or East Indians :

“Vagrant” means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence :

“Master of a ship.” “Master of a ship” includes any person in charge of a decked vessel :

And in Parts III. and V. of this Act “Magistrate” means, within the limits of the towns of Calcutta, Madras, and Bombay, a Magistrate of Police, and, outside those limits, a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class,

PART II.—PROCEDURE.

4. Any police-officer may, within the limits of the towns of Calcutta, Madras, and Bombay, require any person who is apparently a vagrant to accompany him or any other police-officer to, and to appear before, the nearest Magistrate of Police, and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.

5. The Magistrate of Police or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the work house, and to the Governor of the work-house for receiving and detaining such vagrant.

6. Where the officer making the inquiry mentioned in section five is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section one) in any place subject to any adjacent Local Government, such officer may, in his discretion, forward the vagrant to such place in charge of the police, and draw up an order to that effect.

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by section five.

8. Every person while in charge of the police, whether before inquiry as to his vagrancy, or while he is on his way, under section five, to the work-house, or, under section six, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police or Justice before whom any vagrant is taken under section seven may, if he think fit, order the vagrant to receive similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct.

9. Any Magistrate of Police or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extract is not likely to become a vagrant, give such person a certificate under his hand, stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections four, five, six, and seven, shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections four, five, six, and seven, shall apply to such person within such limits as aforesaid.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

10. The Local Government may, from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police, with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

PART III.—GOVERNMENT WORK-HOUSES.

11. The Local Government, with the previous sanction of the Governor-General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants,

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work-house under this Act.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

12. Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

13. Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages, and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold and that the produce of the sale be applied as aforesaid, but subject to the like orders.

14. Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government with the previous sanction of the Governor-General in Council.

The Local Government may authorize any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely) —

(a) solitary confinement within the work-house for any time not exceeding seven days ;

(b) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe ;

(c) hard labour for any time not exceeding seven days ;

(d) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days ;

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

15. The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.—REMOVAL FROM INDIA.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government,

or it may cause sections twenty-three and thirty to be read to him and may then release him.

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—

(a) to proceed to such port in British India as shall be mentioned in the agreement;

(b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(c) to remain on board such ship until she has arrived at her port of destination; and

(d) not to return to India until five years have elapsed from the date of such embarkation.

Every such agreement shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

18. The Local Government of the territories in which the said port is situate may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

PART V.—PENALTIES.

19. Any person refusing or failing to accompany a police-officer to, or to appear before, a Magistrate of Police or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section four, may be

arrested without warrant, and shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

And any person who, when required under section four to accompany a police-officer to, or to appear before, a Magistrate of Police or Justice of the Peace, commits an offence punishable under section three hundred and fifty-three of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence.

20. Any vagrant who escapes from the police while committed to their charge under the orders specified in sections five and six,

Escaping from police.

Quitting work-house without leave.

or who leaves a work-house, under this Act, without permission from the Governor,

or who, having with such permission left a work-house for a limited time or for a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

Failing to return to work-house.

shall, for every such offence, be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. Any person entering into an agreement under section seventeen,

Failing to proceed to port of embarkation.

and failing to proceed in pursuance thereof to the port therein mentioned,

Refusing to go on board-ship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall, for every such offence, be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

22. Any person returning to India within five years of the date

Returning to India.

of his embarkation pursuant to any agreement entered into under section seventeen, unless

specially permitted so to do by the Secretary of State for India, shall, for every such offence, be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

24. Every person imprisoned under section nineteen, twenty, twenty-one, twenty-two, or twenty-three, shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections five and six.

The order of transmission shall certify the fact of the previous conviction.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give), that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

The Governor General in Council may from time to time, by notification in the *Gazette of India*, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor-General in Council seem fit, and either in respect of all or of any of the persons on board such ships.*

The Governor-General in Council may in like manner revoke any exemption made under this section.

26. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras, and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns in force for the time being.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor-General in Council from time to time directs.

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.

28. In imposing penalties under this Part and Part III. of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure in the case of offenders not being European British subjects.

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police or Justice before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section twenty-four, was not the nearest.

Validity of proceedings where Magistrate is not the nearest.

PART VI.—MISCELLANEOUS.

30. Any European British subject who, upon the summary enquiry mentioned in section five, has been determined to be a vagrant, or who has been convicted under section twenty-two or section twenty-three, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII. of the same Code) applicable to an European not being a British subject.

Deprivation of privileges of European British subjects under Criminal Procedure Code.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of any thing contained in the former part of this section.

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

31. Whenever any person of European extraction lands in India, or, being a non-commissioned officer or soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association, or body of persons in any capacity, and whenever a sailor of European extraction, not being a British subject, is discharged from his ship in any British Indian port,

Liability of importers of Europeans or employers of soldiers becoming vagrants.

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association, or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner, or agent chargeable.

Recovery of charges.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.

the consignee of such animal,
 or the agents in India for the sale of such animal,
 or, if such consignee or agents cannot be found,
 the agent to whom the ship in which such animal arrived in India
 was consigned,

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

For the purposes of this section 'consignee' includes any person
 'Consignee' defined. who undertakes to dispose of such animal for the benefit of the consignor, and

'Agent' includes any person who undertakes the agency of such
 'Agent' defined. ship though it may not have been consigned to him.

33. In any proceeding under this Part, a certified copy of the
 Evidence of declaration under section 5. declaration recorded under section five shall be *prima facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

34. The powers and duties conferred and imposed by sections six-
 Exercise of power conferred on Local Government. teen and eighteen on a Local Government, may be exercised and performed by such class of officers as the Local Government from time to time, by notification in the *Official Gazette*, appoints in this behalf.*

35. The powers and duties conferred and imposed by this Act on
 Exercise in Native States of powers conferred on Magistrates, Justices, and Police. Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and police-officers respectively, may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

36. The Governor-General in Council may from time to time make
 Power to make rules for guidance of officers. rules, consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

* See *N. W. Provinces Gazette*, 10th July 1875, p. 927.

ACT NO. XII. OF 1875.

THE INDIAN PORTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1875.

An Act to consolidate and amend the law relating to Ports and Port-dues.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to Ports and Port-dues: It is hereby enacted as follows.—

CHAPTER I.—PRELIMINARY.

Short title. 1. This Act may be called “The Indian Ports Act, 1875.”

Present local extent. 2. It shall extend—

(a) to the ports mentioned in the first schedule hereto annexed, and to such parts of the navigable rivers and channels leading to such ports respectively, as have been declared to be subject to Act No. XXII. of 1855 (*for the regulation of Ports and Port-dues*);

(b) to the other ports or parts of rivers or channels to which the Local Government, in exercise of the power hereinafter conferred, applies the provisions of this Act.

Power to extend this Act. But nothing herein contained shall—

(c) apply to any vessel belonging to, or in the service of, Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State;

(d) deprive any person of any right of property or other private right, except as hereinafter expressly provided; or

(e) affect any law or rule relating to the Customs, or any order or direction lawfully made or given pursuant thereto.

And nothing contained in any of the following sections (namely), thirty-eight, thirty-nine, forty, and forty one, shall apply to any port, river, or channel to which such section has not been specially extended by the Local Government.

3. The Acts mentioned in the second schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

Repeal of Acts.

Every declaration, appointment, or rule made under any such Act, and now in force, shall be deemed to have been made under this Act.

The references made to any Act or provision of an Act hereby repealed shall be read as if made to this Act or the corresponding provision of this Act, as the case may be.

Interpretation-clause.

4 In this Act, unless there be something repugnant in the subject or context—

"Vessel" includes anything made for the conveyance by water of human beings or of property.

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour-Master) having for the time being the charge or control of such vessel:

"Pilot" means a person for the time being authorized by the Local Government to pilot vessels:

"Owner" includes also any agent to whom a vessel is consigned:

"Gunpowder" includes also rockets and other combustible ammunition:

"Magistrate" means a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class, and includes, in the Towns of Calcutta, Madras, and Bombay, a Magistrate of Police; and

"Port" includes also any part of a river or channel in which this Act is for the time being in force.

CHAPTER II.—OF THE POWERS OF THE LOCAL GOVERNMENT.

5. With the previous sanction of the Governor-General in Council,

Power to extend this Act. the Local Government may from time to time, by notification in the official Gazette,

(a) extend this Act to any port or to any part of any navigable river or channel leading thereto in which this Act is not force,*

(b) extend specially the provisions of any of the following sections (namely), thirty-eight, thirty-nine, forty, and forty-one, to any port or to any part of any such river or channel to which such provisions have not been so extended.

Power to extend specially sections 38, 39, 40, and 41.

Power to withdraw this Act. (c) withdraw this Act from any port or any part thereof in which it is for the time being in force:

Provided that every notification under clause (a) or clause (b) of this section may define the limits of the port, river, or channel to which it refers, and that such limits may extend to high-water-mark.

Such limits may include any piers, jetties, landing-places, wharfs, quays, docks, and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance, and good government of such port, river, or channel, whether within or without high-water-mark, and (subject to any rights of private property therein) any portion of the shore or bank within fifty yards of such line.

EXPLANATION.—In this section 'high-water-mark' means the highest point reached by ordinary spring-tides at any season of the year.

* As to the limits of the port of Bassem, *British Burma Gazette*, 10th July 1875, Part II., p. 131. Tavoy and Mergu declared to be ports under the Act, *ibid.*, 28th August 1875, Part II., p. 1563. Limits of port of Tavoy, *ibid.*, 27th November 1875, Part II., p. 218. Limits of port of Puri (Orissa), *Calcutta Gazette*, 8th December 1875,

6. The Local Government may from time to time, with the like sanction, and subject to the rights referred to in section five, alter the limits of any port in which this Act may be in force, and declare or describe, by notification in the official Gazette, or by means of maps, posts, or otherwise, the precise extent of such limits.

7. The Local Government may, from time to time, make such rules, consistent with this Act, as it may think necessary for any of the following purposes, namely,—

(a) for regulating the time at which, and the manner in which, entering or leaving port. vessels shall enter into or go out of any port subject to this Act :

berths of vessels . (b) for regulating the berths, stations, and anchorages to be occupied by vessels in any such port :

striking yards, &c : (c) for striking the yards and top-masts, and for rigging-in the booms and yards, of vessels in any such port ; and for swinging or taking-in davits, boats, and other things projecting from such vessels :

removal of anchors, &c : (d) for the removal or proper hanging or placing of anchors, spars, and other things, in or attached to vessels in any such port :

taking in or discharging ballast : (e) for regulating vessels whilst taking-in or discharging ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged :

keeping free passage : (f) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharfs, quays, docks, moorings, and other works in or adjoining to the same ; and for marking out the spaces so to be kept free :

regulating the anchoring . (g) for regulating the anchoring, fastening mooring, and unmooring of vessels in any such port :

moving and warping : (h) for regulating the moving and warping of all vessels within any such port and the use of warps therein :

use of mooring buoys : (i) for regulating the use of the mooring buoys, chain, and other moorings, in any such port :

rates for use of mooring buoys . (j) for fixing from time to time the rates to be paid for the use of such moorings when belonging to Government, or of any boat, hawser, or other thing belonging to Government :

cargo-boats, &c : (k) for licensing and regulating cargo and other boats and catamarans plying for hire in any such port :

fires and lights : (l) for regulating the use of fires and lights within any such port :

signal-lights (m) for enforcing and regulating the use of signal-lights by vessels at night in any such port :

(n) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port :

(o) for fixing the limits within which vessels shall be prohibited from having on board in any such port any quantity of gunpowder in excess of such quantity as the Local Government prescribes in this behalf.*

CHAPTER III.--OF PORT OFFICERS, THEIR POWERS AND DUTIES,

8. The Local Government shall appoint some officer or body of persons to be Conservator of every port subject to this Act, and may suspend or remove such officer or body.

Subject to any direction by the Local Government to the contrary—

(a) in ports where there is a Master Attendant, such Master Attendant shall be the Conservator :

(b) in ports where there is no Master Attendant, but where there is a Harbour-Master, such Harbour-Master shall be the Conservator.

Where the Harbour-Master is not Conservator, the Harbour-Master and his assistants shall be subordinate to, and subject to the control of, the Conservator

The Conservator shall be subject to the control of the Local Government, or of any intermediate authority which that Government may appoint.

9 The Conservator of any port subject to this Act may, in respect of any vessel within such port, give directions for carrying into effect any port-rule for the time being in force therein.

Whoever wilfully, and without lawful excuse, refuses or neglects to obey any lawful direction of such Conservator, after notice thereof has been given to him, shall, for every such offence, be punished with fine which may extend to one hundred rupees, and with a further fine which may extend to one hundred rupees for every day on which he wilfully continues to disobey such direction :

and, in case of such refusal or neglect, the said Conservator may do, or cause to be done, all acts necessary for the purpose of carrying such direction into execution, and may hire and employ proper persons for that purpose: and all reasonable expenses incurred in doing such acts shall be paid by the person so offending.

* For rules under this section, see *Calcutta Gazette*, 4th August 1875, p. 981. 1st September 1875, p. 1105. 15th September 1875, p. 1149.

Any written notice of a direction given under this Act, left for the Master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of such vessel, shall, for the purposes of this Act, be deemed to have been given to the Master thereof.

10. The Conservator of any such port may, in case of urgent necessity, cut, or cause to be cut, any warp, rope, cable, or hawser, endangering the safety of any vessel in such port or at or near to the entrance thereof.

11. The Conservator may remove, or cause to be removed, any timber, or obstruction, raft, or other thing floating or being in any part of any such port, which obstructs or impedes the free navigation thereof; or anything which obstructs or impedes the lawful use of any pier, jetty, landing place, wharf, quay, dock, mooring, or other work, on any part of the shore or bank which has been declared to be within the limits of such port, and is not private property;

and the owner of any such timber or raft or other thing shall be liable to pay the reasonable expenses of such removal;

and if such owner or any other person has, without lawful excuse, caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such navigation, he shall also be punished with fine which may extend to one hundred rupees.

And the Conservator or any Magistrate having jurisdiction over the offence may cause such nuisance to be abated.

12. If the owner of any such timber or raft, or the person who has caused any such obstruction, impediment, or public nuisance as is mentioned in section eleven, neglects to pay the expense of the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the official Gazette or in such other manner as the Local Government by general or special order directs, such expenses may be recovered in the same manner as any fine under this Act;

and the Conservator may cause such timber, raft, or other thing, or the materials of any nuisance or obstruction so removed, or so much thereof as may be necessary, to be sold by public auction;

and may retain all the expenses of such removal and sale out of the proceeds of such sale, and shall pay the surplus of such proceeds, or deliver so much of the said timber or other materials, as may remain unsold, to the person entitled to receive the same;

and, if no such person appear, shall cause the same to be kept and deposited in such manner as the Local Government directs;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of such sale, by a further sale of so much of the said timber or other materials as may remain unsold.

13. If any obstruction or impediment to the navigation of any port

Removal of obstructions subject to this Act has been lawfully made, or lawfully made. — has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the Conservator shall report the same for the information of the Local Government, and shall, with the sanction of such Government, cause the same to be removed or altered, making to the person suffering damage by such removal or alteration reasonable compensation for the same.

Every dispute arising concerning such compensation, shall be determined according to the law relating to like disputes in the case of land required for public purposes.

14. If any vessel hook or get foul of any of the buoys or moorings
Notice to Conservator laid down by or by the authority of the Local
if vessel fouls Government Government in any such port, the Master of
moorings. such vessel shall not, nor shall any other person, except in the case of emergency, lift such buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the Conservator,

and the Conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel ;

Expense of clearing vessel. and the Master of such vessel shall, upon demand, pay such reasonable expense as may be incurred in clearing the same.

Any Master offending against the provisions of this section shall, for every such offence, be punished with fine which may extend to one hundred rupees.

Penalty.

15. If any vessel be wrecked, stranded, or sunk in any such port, so

Power to raise wreck, as to impede, or be likely to impede, the navigation thereof, the Conservator may cause the
&c. impeding navigation same to be raised, removed, or destroyed ;
within the port

and may recover the same on behalf of the Local Government in

Expense how recoverable. the manner provided by section forty-four.

16. The Conservator or any of his assistants may, whenever he

Power to board vessels. suspects that any offence has been, or is about to be, committed contrary to this Act, or whenever it is necessary for him so to do in the discharge of any duty hereby imposed upon him ;

and the Collector of Customs, or other officer appointed to collect any port-dues or other charges payable in respect of any vessel under this Act, may, whenever it is necessary so to do, for the performance of any duty hereby imposed upon such Collector or other officer,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

If the Master of such vessel, or if any person in possession or occupation of any such building or place, without lawful excuse refuse to allow any officer or other person to board or enter such vessel, building, or place for the performance of any duty imposed upon him by this Act, he shall, for every such offence, be punished with fine which may extend to two hundred rupees.

17. For the purpose of preventing or extinguishing fire in any port

Power to require crew to prevent or extinguish fire. subject to this Act, the Conservator may require the Master of any ship within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such Master.

Any Master refusing or neglecting to comply with such requisition shall be punished with a fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the Master to obey the Conservator's orders for the purpose aforesaid, refuses to obey such orders, shall be punished with fine which may extend to twenty-five rupees.

18. All acts, orders, or directions by this Act authorized to be done

Powers of Conservator may be exercised by Harbour-Master. or given by any Conservator may, subject to his control, be done or given by any Harbour-Master or any assistant of such Conservator or

Harbour-Master,

and any person hereby authorized to do any act may call to his aid such assistance as may be necessary.

19. The Government shall not be answerable for any act or default

Indemnity to Government against default of Harbour-Master, &c. of any Master Attendant, Harbour-Master, or other Conservator of any port subject to this Act; or of any Pilot; or of any Deputy or Assistant of any of the officers above-mentioned; or of any person acting under the authority or direction of any such officer or assistant, done within the limits of such port;

nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things belonging to Government, within the said limits, which may be used by such vessel:

Provided that nothing in this section shall protect the Secretary of State for India in Council from a suit in respect

Proviso.

of any act done by or under the express order or sanction of Government.

CHAPTER IV.—RULES FOR THE SAFETY OF SHIPPING AND THE PRESERVATION OF PORTS.

20. No person shall, without lawful excuse, lift, injure, loosen, or

Injuring buoys, &c.

set adrift any buoy, beacon, or mooring, fixed or laid down by, or by the authority of, the Local

Government in any port subject to this Act.

Whoever offends against the provisions of this section shall, for every such offence, be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

21. Whoever wilfully and without lawful excuse loosens or removes

Wilfully loosening vessel from moorings.

from her moorings any vessel within any such port without leave or authority from the owner

or Master of such vessel, shall, for every such offence, be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

22 No ballast or rubbish, and no other thing likely to form a bank

Improperly discharging or shoal, or to be detrimental to navigation, ballast, shall, without lawful excuse, be cast or thrown into any such port, or into or upon any place on shore, from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods.

Whoever by himself or another so casts or throws the same, and the Master of any vessel from which the same is cast or thrown, shall be punished with fine which may extend to five hundred rupees over and above any expenses which may be incurred in removing the same. If, after receiving notice from the Conservator of the port to desist casting or throwing any such ballast or other thing, any Master continues so to cast or throw it, he shall also be liable to simple imprisonment for a term which may extend to two months.

Nothing in this section applies to any case in which such ballast or other thing is cast or thrown into any such port, with the consent in writing of the Conservator, or within any limits within which such act may be authorized by the Local Government.

23. If any person grave, bream, or smoke any vessel in any such

Gravering, &c., vessel with port, contrary to the directions of the Conservator, or at any time or within any limits at or within which such act is prohibited by any order of the Local Government, such person and also the Master of such vessel, shall, for every such offence, be punished with fine which may extend to five hundred rupees.

24. If any person boil or heat any pitch, tar, resin, dammer, tur-

Boiling pitch, &c., on portwine, oil, or other such combustible matter on board any vessel within prohibited limits, or at any place within its limits where such act is prohibited by the Local Government, or contrary to the order or directions of the Conservator, such person, and also the Master of any vessel on board which such offence is committed, shall, for every such offence, be punished with fine which may extend to two hundred rupees.

25. If any person, by an unprotected artificial light, draws off

Drawing spirit, by un- spirits on board any vessel within any port protected artificial light, subject to this Act, such person, and also the Master of every such vessel, shall, for every such offence, be punished with fine which may extend to two hundred rupees.

26. Every Master of a vessel in any port subject to this Act shall,

Warping when required so to do by the Conservator, permit warps to be made fast to such vessel for

the purpose of warping any other vessel in the port, and shall not allow any such warp to be let go until required so to do.

Any Master offending against the provisions of this section shall be punished for every such offence with a fine which may extend to two hundred rupees.

27. No Master of any vessel shall cause or suffer any warp or

Leaving out hawser, &c., hawser attached to his vessel to be left out in any port subject to this Act, after sunset, in such a manner as to endanger the safety of any boat or other vessel navigating in such port.

Any Master offending against the provisions of this section shall be punished for every such offence with fine which may extend to two hundred rupees.

Gunpowder.

28. The Local Government shall appoint a proper place in which gunpowder in excess of the quantity allowed by rule under section seven, clause (o), for any ship in any port subject to this Act, shall be deposited; and shall also appoint an officer to receive the same.*

29. The Local Government may in such case, by order, fix the times at or within which, and the manner in which, such gunpowder shall be landed and deposited by any vessel inward-bound, and also the times at or within which, and the manner in which, the same shall be taken on board any vessel from such place of deposit.*

30. The Master of such vessel shall, upon such gunpowder being deposited, make and sign a declaration in writing that there is not then, to his knowledge or belief, on board such vessel, any gunpowder exceeding the quantity allowed by the rule last aforesaid.

31. The officer with whom such gunpowder is deposited shall give a receipt for the same to the Master or other person making the deposit, and he shall be accountable to such Master or other person for the re-delivery of the same.

32. If any vessel be prevented by stress of weather from landing or depositing such gunpowder, in excess of the quantity allowed as aforesaid, the Master or owner of such vessel shall, so soon as the weather permits, land and deposit the same at the place so appointed as aforesaid, or shall forthwith give notice to the Conservator, or other officer named for that purpose by any order of the Local Government, of his having such gunpowder on board, and shall obey his directions relating to the same.

33. The Local Government may also, in respect to such port, by order, fix the times and places at which, and the manner in which, vessels outward-bound, requiring to take in any gunpowder exceeding the quantity above-mentioned, shall take in the same, whether such gunpowder has been previously landed from such vessel or not.*

34. The Master of any vessel having on board any gunpowder contrary to the provisions of this Act shall, for every such offence, be punished with fine which may extend to two hundred rupees;

and all gunpowder on board any vessel contrary to the provisions of this Act shall be forfeited to Government, and may be seized by the Conservator, or by any Collector of Customs, or by any Custom-house officer, or other officer authorized in that behalf by the Local Government, within the limits of their respective jurisdictions.

* See *Calcutta Gazette*, 1st September 1875, p. 1105

35. Whoever, without lawful excuse, discharges any gun, musket, or other fire-arm in any port subject to this Act, or on or from the landing-places, piers, wharfs, or quays thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the Local Government, shall, for every such offence, be punished with fine which may extend to fifty rupees.

Guns not to be discharged in port.

Exception.

Penalty.

Extinguishment of Fires.

36. The Master of any vessel in which fire takes place while lying in any port, who wilfully omits to take order to extinguish such fire, shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty on Master omitting to take order to extinguish fire.

Inflammable Oil.

37. [*Repealed by Act VIII. of 1881.*]

Special Rules.

38. No vessel of the burden of two hundred tons or upwards shall be moved in any port to which this section has been specially extended without having a Pilot, Harbour-Master, or Assistant of the Master Attendant or Harbour-Master on board; and no vessel of any burden less than two hundred tons and exceeding one hundred tons shall be moved in any such port without having on board a Pilot, Harbour-Master, or Assistant of the Master Attendant or Harbour-Master, unless authority in writing so to do has been obtained from the Conservator or some officer empowered by him to give such authority.

If any vessel, except in case of urgent necessity, be moved contrary to the provisions of this section, the Master of such vessel shall, for every such offence, be punished with fine which may extend to two hundred rupees, unless upon application to the proper officer the Master be unable to procure a Pilot, Harbour-Master, or Assistant of the Master Attendant or Harbour-Master to go on board the said vessel.

39. Every vessel exceeding the burden of two hundred tons, and lying in any such port, shall be provided with a proper force-pump hose, and appurtenances, for the purpose of extinguishing any fire that may occur on board.

Vessels above 200 tons to be provided with force-pump, &c.

The Master of every such vessel who, having been required by the Conservator to comply with the provisions of this section, without lawful excuse neglects or refuses so to do for the space of seven days after such requisition, shall be punished with fine which may extend to five hundred rupees.

40. No person, unless duly authorized by the Conservator, shall creep or sweep in any such port for anchors, cables, or other stores lost or supposed to be lost.

Unauthorized person not to search for lost stores.

Whoever offends against the provisions of this section shall be punished with fine which may extend to one hundred rupees.

41. No person shall, without the permission of the Conservator, remove or carry away any rock, stones, shingle, gravel, or soil, or any artificial protection from any part of the bank or shore of any such port; Removing stones, &c., or injuring shores of port prohibited.

and no person shall sink or bury in any part of such bank or shore, whether the same be public or private property, any mooring-post, anchor, or any other thing, or do any other thing which is likely to injure, or to be used so as to injure, such bank or shore, except with the permission of the said Conservator, and with the aid or under the inspection of such person (if any) as he may appoint to take part in, or overlook the performance of, such work.

Whoever offends against the provisions of this section shall, for every such offence, be punished with fine which may extend to one hundred rupees, and shall pay the expenses of repairing the injury (if any) done by him to such bank or shore.

Publication of Orders.

42. Every declaration, order, and rule of a Local Government, made in pursuance of this Act, shall be published in the official Gazette; and a copy thereof shall be fixed up in some conspicuous place in the office of the Conservator of every port to which such order relates, and in the Custom-house, if any, of every port subject to this Act. Publication of orders of Local Government.

Whoever disobeys any such order or rule shall be liable to a fine not exceeding one hundred rupees for every such offence. Penalty for disobedience to rules.

And in the case of disobedience to any rule made under section thirty-seven, the owner or Master of the vessel concerned shall also be punished with a fine not exceeding two hundred rupees for each day during which such rule is disobeyed.

CHAPTER V.—OF SALVAGE IN PORTS. [*Repealed by Act VII. of 1880, s. 72.*]

CHAPTER VI.—OF PORT-DUES AND CHARGES.

45. In each of the ports mentioned in the first schedule hereto annexed, such port-due, not exceeding the amount specified for such port in the third column of the same schedule as the Local Government from time to time directs, shall be levied on vessels entering the same port and described in the second column of the same schedule, but not oftener than the time fixed for such port in the fourth column of the same schedule. Levy of port-dues.

Whenever the Local Government, with the previous sanction of the Governor-General in Council, has declared or hereafter declares any

port* to be subject to this Act, it may, with the like sanction, by the same or any subsequent declaration, further declare—

(a) the maximum amount of dues to be levied on vessels entering such port;

(b) the conditions and modifications under which such dues shall be levied;†

and may also, from time to time, with the like sanction, vary such conditions and modifications: and such dues shall be levied accordingly.

All port-dues now leviable in any of the said ports shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

No port-dues or fees shall hereafter be levied in any port except under the authority of this Act.

No order increasing or imposing port-dues under this section shall take effect until the expiration of sixty days from the day on which such order has been published in the local official Gazette.

46. The Local Government may, from time to time, exempt the Local Government may vessels entering any port subject to this Act vary port-dues. from the levy of port-dues and cancel such exemption, or it may from time to time vary the rate at which port-dues shall be levied in any such port, in such manner as, having regard to the receipts and charges on account of that port, it thinks expedient by reducing or raising the dues, or any of them:‡

PROVISO.

Provided that the rates shall not in any case exceed the amount authorized to be taken by this Act.

47. For every port at which port-dues are levied under this Act, a distinct account, to be called the Account of Accounts of port-dues. the Port Fund of the port to which it relates, shall be kept by such officer as the Local Government may appoint for that purpose.

This account shall show in complete detail the receipts and charges of the port; and an abstract statement of every such account shall be published annually, as soon after the first of May of each year as may be practicable, in which statement the balance at the close of the year at the credit or debit of the port shall be shown.

If, for any of the purposes of this Act, an advance of money has been or shall be made by Government on account of any port subject to this Act, simple interest upon that advance, or upon so much of it as remains or shall remain unpaid, at such rate as the Governor-General in Council may determine, shall be charged in the Port Fund Account thereof.

All expenses, including the pay and allowances of all persons upon the establishment of the port, the cost of buoys, beacons, lights, and all

* i. e., any other port.

† See as to False Point, *Calcutta Gazette*, 29th September 1875, p. 1231; as to Puri, *ibid.*, 8th December 1875, p. 1506.

‡ See as to Chûraman, Channua, Sartha, Laichunpur, Subarnrekha, Dhamra, and its subsidiary ports, *Calcutta Gazette*, 8th December 1875, p. 1504.

other works maintained chiefly for the benefit of vessels being in, or entering, or leaving the port, or passing through the rivers or channels leading thereto, but excluding receipts and expenses on account of pilotage, incurred for the sake of every such port, shall be charged in the Port Fund Account of that port.

And all money, including salvage-money, proceeds of waifs, and fines, received under this Act, at or on account of every such port, shall be credited in the Port Fund Account of that port.

The Local Government may direct that for the purposes of this section any number of ports shall be regarded as constituting a single port; and thereupon all sums received on account of port-dues at any of the same ports shall form a common fund which shall be available for the payment of all charges incurred on account of any of the same ports, and such balance as may remain after payment of such expenses may be temporarily invested in such manner as the Local Government may from time to time direct.

48. The Collector of Customs at every such port, or such other officer as the Local Government appoints in this behalf,* shall collect the port-dues above-mentioned.

The officer to whom any such port-dues are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the port-dues are paid, and the name, tonnage, and other proper description of the vessel in respect of which such payment is made.

49. Within twenty-four hours after the arrival, within the limits of any port subject to this Act, of any vessel liable to the payment of port-dues under this or any subsequent Act, the Master of such vessel shall report such arrival to the Conservator of such port.

Any Master without lawful excuse failing to make such report within the time aforesaid shall, for every such offence, be punished with fine which may extend to one hundred rupees.

Nothing in this section applies to tug-steamers, ferry-steamers, or river-steamers plying in any of the ports subject to this Act.

50. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern-posts thereof for denoting her draught, the Conservator may cause the same to be ascertained by means of the operation of hooking, and the Master of such vessel shall be liable to pay the expenses of such operation.

Tonnage of vessel liable to port-dues how ascertained :

51. In order to ascertain the tonnage of any vessel liable to pay port-dues, the following rules shall be observed :—

(a.)—If such vessel be a British registered vessel, or a vessel registered under Act No. X. of 1841 or Act No. XI. of 1850, or under the laws for the time being

If registered ;

* As to False Point, see *Calcutta Gazette*, 8th December 1875, p. 1502.

in force for the registration of vessels in India, the Conservator may require the owner or Master of such vessel, or any person having possession of her register, to produce such register for inspection. If any such owner, Master, or other person neglect or refuse to produce such register, or otherwise to satisfy the Conservator as to what is the true tonnage of the vessel in respect of which such port-dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Conservator may cause such vessel to be measured, and the tonnage thereof to be ascertained; and in such case the owner or Master of such vessel shall also be liable to pay the expenses of such measurement.

(b).—If such vessel be not a British registered vessel, or a vessel registered under Act No. X. of 1841 or Act No.

If not registered.

XI. of 1850, or under the laws for the time being in force for the registration of vessels in India, and the owner or Master thereof fail to satisfy the Conservator as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Conservator shall cause such vessel to be measured, and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case, the owner or Master of such vessel shall be liable to pay the expenses of such measurement.

52. If the Master of any vessel, in respect of which any port-dues

On refusal to pay port-dues, &c., the Collector may distrain and sell. or charges are payable under this Act, refuses or neglects to pay the same on demand, the Collector of Customs, or other person authorized to collect such port-dues, fees, or charges, may distrain or arrest such vessel, and the tackle, apparel, and furniture belonging thereto, or any part thereof, and detain the same until the amount due is paid;

and in case any part of the said port-dues or charges, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Collector of Customs, or other such person as aforesaid, may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, charges, and costs, including the costs of sale remaining unpaid, and shall render the surplus (if any) to the Master of such vessel upon demand.

No port-clearance to be granted until dues, &c., are paid.

53. The officer of Government, whose duty it is to grant a port-clearance for any vessel, shall not grant such clearance—

(a) until her owner or Master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees, and charges, and of all fines, penalties, and expenses to which such vessel or her owner or Master is liable under this Act;

(b) until all expenses, which by the Merchant Shipping Act, 1854, section 228, are to be borne by her owner, incurred since her arrival in the port from which she seeks clearance, have been duly paid.

54. If the Master of any vessel in respect of which any port-dues

Port-dues, &c., payable in one port recoverable by Collector at any other port.

or charges are payable causes her to leave any port without having discharged such dues, fees, or charges, the Collector of Customs or other

officer authorized to collect the same may require in writing the Collector of Customs or other officer as aforesaid, in any other port in British India to which she may proceed, or in which she may be, to levy such dues or charges.

Every Collector or other officer to whom such requisition shall be directed shall proceed to levy such dues or charges in the manner prescribed in section fifty-two; and a certificate purporting to be made and signed by the Collector of Customs or other officer as aforesaid of the port where the port-dues or charges became payable, stating the amount so payable, shall be sufficient *prima facie* proof of such amount in any proceeding under the said section, and also (in case the amount payable is disputed) in any subsequent proceeding under section seventy.

55. If the Master of any such vessel evades the payment of any port-dues or charges payable under this Act, he shall be liable on conviction to a penalty not exceeding five times the amount so payable.

In any proceeding before a Magistrate for the adjudication of such penalty, any such certificate as is mentioned in section fifty-four, stating that the Master has evaded such payment, shall be sufficient *prima facie* proof of the evasion, unless the Master shows to the satisfaction of the Magistrate that the departure of the vessel without having discharged the dues or charges payable was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

56. Vessels entering any port subject to this Act (other than the ports in British Burma) in ballast, and not carrying passengers, shall be charged with a port-due not exceeding three-fourths of the port-due with which they would otherwise be chargeable.

57. When any vessel enters any port subject to this Act, but does not discharge or take in any cargo or passenger therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), the port-due chargeable in respect of such vessel shall be at a rate equal to one-half the rate chargeable in respect of other vessels:

Provided that no vessel entering any of the ports subject to the Governor of Fort St. George in Council, and leaving the same within forty-eight hours without discharging or taking in any passengers or cargo, shall be charged with any port-dues.

58. No port-due shall be chargeable in respect of any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage.

Hospital Port-dues.

59. The Local Government may, from time to time, by notification in the official Gazette, order that there shall be paid in respect of every ship entering any port

subject to this Act, within a reasonable distance of which there may be a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thinks fit.

Such port-dues shall be called Hospital Port-dues.

No order imposing or increasing hospital port-dues shall take effect until the expiration of sixty days from the day on which such order has been published in the official Gazette.

Whenever the Local Government is satisfied that proper provision has been made by the owners or agents of any ship or class of ships for giving medical aid to the seamen employed on board such ship or class of ships, it may, by notification in the official Gazette, exempt such ship or class of ships from any payment under this section. The Local Government may, by like notification, withdraw any such exemption.

60. Such hospital port-dues shall be applied, as the Local Government may direct, to the support of any such

Application of hospital port-dues.

hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid for the shipping in such port and for the seamen belonging to such ships, whether such seamen are ashore or afloat.

Fees for certain Services.

61. Within any port subject to this Act, fees may be charged for

Fees for pilotage, hauling, re mooring &c

pilotage, hauling, mooring, re-mooring, hooking, measuring, and other services rendered to vessels at such rates as the Local Government may, from time to time, direct :

Provided that, in the case of fees for pilotage, the previous sanction of the Governor-General in Council has been obtained.

The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by the former part of this section.

CHAPTER VII.—OF HOISTING SIGNALS.

62. The Master of every inward or outward-bound vessel, on arriv-

Master to hoist number of vessel.

ing within signal-distance of any signal station established within the limits of the river Hugli, or within the limits of any part of a river or channel subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

63. Any Master of a vessel arriving as aforesaid, who refuses or

Penalty for not hoisting signal

neglects to conform to the above rule, shall be liable on conviction, for each instance of such refusal or neglect, to a fine not exceeding one thousand rupees.

64. Every pilot in charge of a vessel shall require the number of

Pilot to require Master to hoist signal.

the vessel of which he is in charge to be duly signalled as provided under section-sixty-two.

When, on a requisition from the pilot to that effect, the Master

Pilot may anchor if of a vessel refuses to hoist the number of a Master refuses. vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot in charge of such vessel may, on arrival at the first place of safe anchorage, anchor the vessel, and refuse to proceed on his course until the requisition has been complied with.

65. Any pilot in charge of a vessel who disobeys, or abets within

Punishment of pilot dis- the meaning of the Indian Penal Code dis-
obeying provisions of this obedience to, any of the provisions of this
chapter. chapter, shall be liable to a penalty not exceed-
ing five hundred rupees for each instance of such disobedience or abet-
ment, and in addition shall be liable to dismissal from his appointment.

CHAPTER VIII.—OF PENALTIES.

66. All offences against this Act shall be triable by a Magistrate.

Offences how triable, and And any Magistrate may, by warrant under his
penalties how recovered. hand, cause the amount of any such penalty
imposed upon the owner or Master of any vessel, for any offence com-
mitted on board of such vessel, or in the management thereof, or other-
wise in relation thereto, whereof such owner or Master is convicted, to
be levied by distress and sale of such vessel, and the tackle, apparel,
and furniture thereof, or so much thereof as is necessary.

67. In case of any conviction under this Act, the convicting Magis-

Costs of conviction. trate may order the offender to pay the costs
of such conviction, in addition to any fine or
expenses to which he may be liable.

Such costs may be assessed by the Magistrate, and may be levied
and recovered in the same manner as any fine under this Act.

68. Whenever any person is liable, under the provisions of this

Damages, &c., payable Act, to pay any sum of money, damages, or ex-
under this Act, how ascer- penses not exceeding one thousand rupees, the
tained and recovered. same may be recovered and levied in the same
manner as any fine under this Act, and, if necessary, the amount there-
of may be fixed and assessed by the Magistrate before whom the case
is tried.

69. Whenever any fine, damages, or expenses is or are levied under

Costs of distress. this Act, by distress and sale, the costs of such
distress and sale may be levied in addition to
such fine, damages, or expenses, and in the same manner.

70. If any dispute arise concerning the amount leviable by any

Magistrate to determine distress or arrest under this Act, or the charges
the amount to be levied in or costs payable under the last preceding section,
case of dispute. the person making such distress or using such
arrest may detain the goods distrained or arrested, or the proceeds of
the sale thereof, until the amount to be levied has been determined by
a Magistrate, who, upon application made to him for that purpose, may
determine such amount, and award such costs, to be paid by either of

the parties to the other of them, as he thinks reasonable; and payment of such costs, if not paid on demand, shall be enforced in the same manner as any penalty under this Act.

71. Any person offending against the provisions of this Act, in any port, river, or channel subject to this Act, shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such port, river, or channel, or adjoining either side of that part of the river or channel in which such offence is committed.

Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits; and in case any such Magistrate exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

72. No conviction, order, or judgment of any Magistrate under this Act, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state, on the face of the conviction, order, or judgment, the evidence on which it proceeds.

If no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions.

CHAPTER IX.—MISCELLANEOUS.

73. If any vessel belonging to any of Her Majesty's subject, or sailing under British colours, hoist, carry, or wear, within the limits of any port subject to this Act, any flag, jack, pendant, or colours, the use whereof on board such vessel has been prohibited by the Statute 17th & 18th of Victoria, chapter 104, or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of Her Majesty's Regulations in force for the time being, the Master of such vessel shall, for every such offence, be punished with fine which may extend to fifty rupees.

Such fine shall be in addition to any other penalty recoverable under the said Statute or any future Statute to be made in that behalf.

Any officer of Her Majesty's Navy within the limits of such port, or the Conservator of such port, may enter on board any such vessel, and seize and take away any flag, jack, pendant, or colour so unlawfully hoisted, carried, or worn on board the same.

74. Any Magistrate, upon an application being made to him by the Consul of any Foreign Power to which the Foreign Deserters' Act, 1852, has, by an order of Her Majesty in Council, been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any

ship of such Foreign Power, may, until a revocation of such order in Council has been publicly notified, issue his warrant for the apprehension of any such deserter;

and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or, at the instance of the Consul, to be detained in custody till the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month:

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during such detention;

Provided also that the detention of such deserter shall not be continued beyond twelve weeks.

75. The provisions contained in sections eleven and twenty-two

Application of sections shall be applicable to all ports heretofore or hereafter declared by the Local Government to be ports for the shipment and landing of goods, but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

Any penalties imposed by him, and any expenses incurred by his order under the said provisions, shall be recoverable respectively in the manner provided in sections sixty-six and sixty-eight.

In any of the said ports for the shipment and landing of goods the consent referred to in section twenty-two may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Local Government.

76. Any dispute arising concerning the amount due under section

Disputes concerning amount due under section 15 or section 43.

fifteen or section forty-three shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

77. Act XIII. of 1867, section one, shall be read as if, for the words

Amendment of Act XIII. of 1867.

“and such port-due,” the following words were substituted, namely,—“The port-due leviable under the Indian Ports Act, 1875, in either of the ports of Maulmain and Bassein.”

THE FIRST SCHEDULE.

(See section 2.)

PART I.—BRITISH BURMA.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Maulmain	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Not exceeding four annas per ton.	Once in sixty days.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pie per ton.	Ditto.
Rangoon	Sea-going vessels of ten tons and upwards.	Not exceeding six annas per ton.	Ditto.
Kyook Phyoo	Ditto ..	Not exceeding four annas per ton.	Ditto.
Akynb	Ditto ...	Ditto ...	Ditto.
Bassein	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Ditto ..	Ditto.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pie per ton.	Ditto.

PART II.—THE LOWER PROVINCES.

Chittagong	Sea-going vessels of ten tons and upwards.	Not exceeding four and a half annas per ton.	Once in sixty days.
Port Canning	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton; provided that in the case of <i>dhonis</i> and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port, except in the case of <i>dhonis</i> and country vessels employed in the coasting trade, which shall not be chargeable with port-dues at the same port more than once in ninety days.

* As to Tavoy and Mergui, see *British Burma Gazette*, 28th August 1875, Part II., p. 163.

THE FIRST SCHEDULE—(continued).

(See section 2.)

PART II.—THE LOWER PROVINCES—(continued).

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Port Canning— <i>continued</i> .	Tug-steamers and river-steamers belonging to Port Canning.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December in each year.
Calcutta	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton; provided that in the case of <i>dhonis</i> and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port, except in the case of <i>dhonis</i> and country vessels employed in the coasting trade, which shall not be chargeable with port-dues at the same port more than once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and 31st December in each year.
Juttack Ports,—namely, Balasore, Churaman, Lai-chhunpur, Channua, Subarnrekha, Dhamra, and Sartha.	Sea-going vessels of three hundred maunds and upwards.	Not exceeding six annas per hundred maunds.	Whenever the vessel enters the port.

PART III.—THE MADRAS PRESIDENCY.*

Madras	Sea-going vessels of fifteen tons and upwards.	Not exceeding eight annas per ton, provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels.†	
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* The provisions contained in the fourth column of this Part shall, so far as they are applicable, apply to the Port of Madras. See Act IV. of 1881, s. 3.

† See Act IV. of 1881, s. 2.

THE FIRST SCHEDULE—(continued).

(See section 2.)

PART III.—THE MADRAS PRESIDENCY—(continued).

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.	
<i>Eastern Group—</i>				
1. Ganjam ...	Sea-going vessels of fifteen tons and upwards.	Not exceeding three annas per ton: provided that in the case of vessels employed in the coasting trade, not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels: provided also that any steamer engaged in the coasting trade, when it enters any of the ports of the Eastern and Western Groups, shall pay the highest rate of port-dues leviable at any port of such group and an addition of half of such highest rate.	(a.) No coasting steamer having paid port-dues at any port shall be chargeable with port-dues again at the same or at any other port of the same group within thirty days. (b.) No coasting vessel other than a coasting steamer shall be chargeable with port-dues at the same port more than once in sixty days. (c.) No vessel other than a coasting vessel or a coasting steamer shall be chargeable with port-dues at the same port more than once in ninety days.	
2. Gopálpur ...	Ditto ...	Ditto ...	In the above rules the expression "coasting vessel" means any vessel which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port on the Continent of India or the Island of Ceylon.	
3. Calingapatam ...	Ditto ...	Ditto ...		
4. Bimlipatam ...	Ditto ...	Ditto ...		
5. Vizagapatam ...	Ditto ...	Ditto ...		
6. Coconada ...	Ditto ...	Ditto ...		
7. Coringa* ...				
8. Masulipatam ...	Ditto ...	Ditto ...		
9. Madras† ...	Ditto ...	Ditto ...		
10. Cuddalore ...	Ditto ...	Ditto ...		
11. Porto Novo ...	Ditto ...	Ditto ...		
12. Tranquebar ...	Ditto ...	Ditto ...		
13. Negapatam ...	Ditto ...	Ditto ...		
14. Nagore* ...				
15. Tuticorin ...	Ditto ...	Ditto ...		
<i>Western Group—</i>				
1. Mangalore ...	Ditto ...	Ditto ...		
2. Cannanore ...	Ditto ...	Ditto ...		
3. Tellicherry ...	Ditto ...	Ditto ...		
4. Calicut ...	Ditto ...	Ditto ...		
5. Beypore* ...				
6. Cochin ...	Ditto ...	Ditto ...		

* NOTE.—As regards the levy of port-dues, each of the following pairs of ports—(namely) Coconada and Coringa, Negapatam and Nagore, Calicut and Beypore—shall be treated as if it were only one port; every vessel in respect of which such dues have been charged and taken at one of any of the said pairs being exempted from the charge on entering the other of the same pair.

† The numeral and word "9. Madras" should be omitted. See Act IV. of 1861, s. 2.

THE FIRST SCHEDULE—(continued).

(See section 2.)

PART IV.—THE BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Bombay ...	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding four annas per ton, and not less than two annas per ton for each class of vessels, as the Trustees incorporated under the Bombay Port Trust Act, 1873, may direct.	Once in the same month.
	Tug-steamers, Ferry-steamers, and River-steamers.	Ditto ...	Once between the 1st January and the 30th June, and once between the 1st July and 31st December in each year.
<i>Northern Group of Ports—</i>			
1. Gogo ...	Sea going vessels of ten tons and upwards (except fishing boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port: Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Bāvliāri ...	Ditto ...	Ditto ...	Ditto.
3. Khun ...	Ditto ...	Ditto .	Ditto.
4. Tankária ...	Ditto .	Ditto ..	Ditto.
5. Dehegām ...	Ditto ...	Ditto ...	Ditto.
6. Dehej ...	Ditto ..	Ditto .	Ditto.
7. Broach ..	Ditto ...	Ditto ...	Ditto.
8. Bhagwá ...	Ditto ...	Ditto ...	Ditto.
9. Surat ...	Ditto ...	Ditto ...	Ditto.
10. Matwád ...	Ditto ...	Ditto ...	Ditto.

THE FIRST SCHEDULE—(continued).

(See section 2.)

PART IV.—THE BOMBAY PRESIDENCY—(continued).

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
<i>Northern Group of Ports continued.</i>			
11. Bulsar ...	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port. Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty-days.
12. Umarsári ...	Ditto ..	Ditto ..	Ditto.
13. Kolak ...	Ditto ..	Ditto ...	Ditto.
14. Kalai ...	Ditto ..	Ditto ..	Ditto.
15. Maroli ...	Ditto ...	Ditto ..	Ditto.
16. Umbargám ...	Ditto ...	Ditto ...	Ditto.
17. Gholwad ...	Ditto ...	Ditto ...	Ditto.
18. Dahanu creek ...	Ditto ..	Ditto ...	Ditto.
19. Tarapur ...	Ditto ...	Ditto ...	Ditto.
20. Alivara Navapur ...	Ditto ...	Ditto ...	Ditto.
21. Satpati creek ..	Ditto ...	Ditto ...	Ditto.
22. Mahim (Kelva) ...	Ditto ...	Ditto ...	Ditto.
23. Kelva ...	Ditto ..	Ditto ...	Ditto.
24. Dantivra ...	Ditto ...	Ditto ...	Ditto.
25. Arnala ...	Ditto ...	Ditto ...	Ditto.
<i>Southern Group of Ports—</i>			
1. Bandora ...	Ditto ...	Ditto ...	Ditto.
2. Verava ...	Ditto ...	Ditto ...	Ditto.
3. Manori ...	Ditto ...	Ditto ...	Ditto.
4. U'tan ...	Ditto ...	Ditto ...	Ditto.
5. Bassein ...	Ditto ...	Ditto ...	Ditto.
6. Bhiwandi ...	Ditto ...	Ditto ...	Ditto.
7. Kallian ...	Ditto ...	Ditto ...	Ditto.
8. Tanna ...	Ditto ...	Ditto ...	Ditto.
9. Trombay ...	Ditto ...	Ditto ...	Ditto.
10. Panwel ...	Ditto ...	Ditto ...	Ditto.
11. Karauja ...	Ditto ...	Ditto ...	Ditto.
12. Rewas ...	Ditto ..	Ditto ...	Ditto.
13. Nagothna ...	Ditto ...	Ditto ...	Ditto.
14. Thal ...	Ditto ...	Ditto ...	Ditto.
15. Alibag ...	Ditto ...	Ditto ...	Ditto.
16. Revdanda ...	Ditto ...	Ditto ...	Ditto.
17. Talkhari ...	Ditto ...	Ditto ...	Ditto.
18. Bankot ..	Ditto ...	Ditto ...	Ditto.

THE FIRST SCHEDULE—*continued.*

(See section 2.)

PART IV.—THE BOMBAY PRESIDENCY—*continued.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
<i>Southern Group of Ports—continued.</i>			
19. Kelsi ...	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port. Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
20. Harnai ...	Ditto	Ditto	Ditto.
21. Anjanwel ...	Ditto	Ditto	Ditto.
22. Borya ...	Ditto	Ditto	Ditto.
23. Jaygarh ...	Ditto	Ditto	Ditto.
24. Ratnagiri ...	Ditto	Ditto	Ditto.
25. Purnagarh ...	Ditto	Ditto	Ditto.
26. Yeshwantgarh ...	Ditto	Ditto	Ditto.
27. Vizadurg ...	Ditto	Ditto	Ditto.
28. Devgarh ...	Ditto	Ditto	Ditto.
29. Achara ...	Ditto	Ditto	Ditto.
30. Malwan ...	Ditto	Ditto	Ditto.
31. Nivti ...	Ditto	Ditto	Ditto.
32. Vengorla ...	Ditto	Ditto	Ditto.
33. Reri ...	Ditto	Ditto	Ditto.
34. Tirekhol ...	Ditto	Ditto	Ditto.
35. Karwar including Baithkol ...	Ditto	Ditto	Ditto.
36. Chendya ...	Ditto	Ditto	Ditto.
37. Ankola ...	Ditto	Ditto	Ditto.
38. Gangawli ...	Ditto	Ditto	Ditto.
39. Tadri ...	Ditto	Ditto	Ditto.
40. Honawar ...	Ditto	Ditto	Ditto.
41. Shirali ...	Ditto	Ditto	Ditto.
42. Coomta ...	Ditto	Ditto	Ditto.
43. Murdeshwar ...	Ditto	Ditto	Ditto.
44. Bhatkal ...	Ditto	Ditto	Ditto.
Karachi ...	Ditto	Four annas per ton	Once in three months.
	Tug-steamers and river-steamers.	Ditto	Once between the 1st January and the 30th day of June, and once between the 1st July and the 31st December in each year.
Aden ...	Sea-going vessels of ten tons and upwards.	Three annas per ton	Once a month.

THE SECOND SCHEDULE

(See section 3.)

Number and year.	Subject.	Extent of repeal.
Act XIII. of 1839	Port duties	So much as has not been repealed.
Act XXII. of 1855	Ports and Port dues	Ditto
Act XIII. of 1856	Police in Presidency Towns	Section 117.
Act XXX. of 1857	Port-dues and Fees (Calcutta)	The whole.
Act XXXI. of 1857	Port dues and Fees (Bombay)	Ditto
Act XXXV. of 1857	Port-dues and Fees (Maulmain, Rangoon, &c.)	Ditto.
Act II. of 1858	Port-dues and Fees in certain Ports in the Province of Cuttack	Ditto.
Act VIII. of 1858	Port-dues and Fees (Karachi)	Ditto.
Act XV. of 1858	Port-dues and Fees (Port of Aden)	Ditto.
Act XVIII. of 1858	Port-dues and Fees (certain Madras Ports)	Ditto.
Act XIX. of 1860	Amending Act XXII. of 1855	Ditto
Act XXV. of 1860	Bassam	Ditto
Act XLII. of 1867	Amending Act XXV. of 1860	In the title, the words "for the levy of enhanced Port-dues in the Ports of Maulmain and Bassem, and" The preamble down to and including the words "mentioned, And" Section one down to and including the word "Bassem."
Act VII. of 1873	Burma Port-dues	The whole
Bengal Act I. of 1862	Hoisting Signals	Ditto.
Bengal Act I. of 1863	Port-dues and Fees in the Port of Canning on the River Mutlah	Ditto.
Bengal Act III. of 1865	Fine in Ports	Sections 3 and 4. Section 8, clauses 1 and 2 Section 10.
Bengal Act IV. of 1866	Amending Act XIII. of 1856	Section 103
Bengal Act III. of 1867	Ships in Ports	Sections 7, 11, 12, and 13.
Bengal Act III. of 1872	Amending Bengal Act V. of 1870 and Act XXII. of 1855	Section 5.
Madras Act I. of 1864	Extension of parts of Act XXII. of 1855.	The whole.
Madras Act VII. of 1867	Port-dues	Ditto.
Madras Act VIII. of 1867	Madras Police	Section 80
Bombay Act IV. of 1863	Amending Act XV. of 1858 (Port-dues, Aden).	The whole.
Bombay Act XI. of 1866	Port-dues	Ditto.
Bombay Act I. of 1873	Bombay Port Trust Act, 1873	Section 75.

ACT NO. I. OF 1876.

THE INDIAN TELEGRAPH ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 4TH JANUARY 1876.

An Act to amend the law relating to Telegraphs in India.

Preamble. WHEREAS it is expedient to amend the law relating to Telegraphs in India; It is hereby enacted as follows:—

I.—Preliminary.

Short title. 1. This Act may be called “The Indian Telegraph Act, 1876.”

Local extent. It extends to the whole of British India and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement. And it shall come into force at once.

Repeal of Acts. 2. Act No. XXXIV. of 1854 (*for regulating the establishment and management of Electric Telegraphs in India*) and Act No. VIII of 1860 (*for regulating the establishment and management of Electric Telegraphs in India*) are hereby repealed:

But all licenses granted, declarations made, and rules framed under either of the said Acts, and now in force, shall be deemed to have been respectively granted, made, and framed under this Act.

Interpretation-clause.

3. In this Act—

“Telegraph” means an electric or magnetic telegraph:

“Telegraph officer” means any person employed either permanently or temporarily in connection with a telegraph established or maintained and worked by the Government, or by a Company or person licensed under this Act; and

“Message” means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered.

II.—Privileges and powers of Government.

Exclusive privilege of establishing telegraphs. 4. Within British India, the Governor-General in Council shall have the exclusive privilege of establishing lines of telegraph:

Proviso as to licenses. Provided that the Governor-General in Council may grant a license to any person or Company to establish or to maintain a line of telegraph within any part of British India, which license shall be revocable on the breach of any of the conditions therein contained.

5. On the occurrence of any public emergency, or in the interest

Power to take possession of telegraphs established by license.

of the public safety, the Governor-General in Council or the Local Government may take temporary possession of any line of telegraph established or maintained by any Company or person licensed under this Act, or may order that any message to or from any person or relating to any specified subject shall be intercepted or communicated to the Government or any officer thereof mentioned in such order.

If any doubt arises as to the existence of a public emergency, or whether any act done under this section was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive evidence on the point.

6 Any Railway Company, on being required so to do by the

Power to establish telegraphs on land of Railway Company.

Governor-General in Council, shall permit the Government to establish upon the land of such Company, whether within or without the railway fence as the Governor-General in Council may in each case determine, a line of telegraph, and shall give every reasonable facility for establishing, maintaining, and using the same.

7. The Governor-General in Council may, from time to time, frame

Power to frame rules for the conduct of Government telegraphs.

rules consistent with this Act for the conduct of telegraphs heretofore or hereafter established by Government, and may therein prescribe the regulations, conditions, and restrictions according to which all messages and signals shall be transmitted by such telegraphs.

Power to frame rules for telegraphs established by license.

8. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,

(a) prescribe rules for the conduct of any telegraph established or maintained by any Company or person licensed under this Act ;

(b) declare what portions of this Act shall be applicable to such telegraph and to persons using the same or employed in connexion therewith ;

(c) declare that this Act, or such portions thereof as may be specified in the notification, shall be applicable to any telegraph established or to be established within British India by any Foreign Prince or State with the consent of the Government of India, and to persons using such telegraph or employed in connection therewith.

All rules prescribed under this section shall have the force of law.

9 The Government of India shall not be responsible for any loss or

Government not responsible for loss or damage.

damage which may occur in consequence of any telegraph officer failing to transmit with accuracy or to deliver any message given to him for transmission or delivery ; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously, or fraudulently.

III.—Penalties.

10. Whoever, otherwise than under a license duly granted as afore-

Penalty for establishing or maintaining unlicensed telegraphs.

said, establishes, or after revocation of such license maintains, a line of telegraph within British India, shall be liable to a fine not

exceeding one thousand rupees, and, for every week during which such line shall be maintained, shall be liable to a further fine not exceeding five hundred rupees.

11. Whoever, knowing or having reason to believe that a telegraph

For using or working such telegraphs. has been established or is maintained in contravention of this Act, uses such telegraph for the purpose of sending or receiving messages, or performs any service incidental thereto, shall, for every such offence, be liable to a fine not exceeding fifty rupees.

12. Every Railway Company and every officer of a Railway Com-

For opposing establishment, &c., of telegraphs on railway land. pany, neglecting or refusing to comply with the provisions of section six, shall be liable to a fine not exceeding one thousand rupees for every day during which such neglect or refusal continues.

13. Whoever, without permission of some competent authority,

For intruding into signal-room, &c. enters the signal-room of a telegraph office of the Government or of a Company or person licensed under this Act,

and whoever enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so,

and whoever refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein,

and whoever wilfully obstructs or impedes any such officer or servant in the performance of his duty,

shall be liable to a fine not exceeding five hundred rupees.

14. Whoever does any of the acts mentioned in section thirteen

For unlawfully learning the contents of messages. with the intention of unlawfully learning the contents of any message, or for any other unlawful purpose, shall (in addition to the fine to which he is liable under section thirteen) be liable to imprisonment for a term which may extend to a year.

For damaging, &c., telegraphs with intent

15. Whoever, intending—

to prevent transmission, (a) to prevent or obstruct the transmission, conveyance, or delivery of any message,

to tap, or (b) to intercept or to acquaint himself with the contents of any message, or

to commit mischief. (c) to commit mischief,

damages, removes, tampers with, or touches any battery, machinery, wire, cable, post, or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.*

Such offences to be cognizable and non-bailable.

All offences under this section shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure.

16. Whenever it appears to the Director-General of Telegraphs that

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

any act causing or likely to cause wrongful damage to any telegraph is repeatedly or maliciously committed in any place, and that the employment of an additional police-force in such place is thereby rendered necessary, the Local Government may, on the application of the said Director-General, send such additional force to such place, and employ the same therein so long as such necessity continues ;

and the inhabitants of such place shall be charged with the cost of such additional police-force ;

and the Local Government may, by order in each case, define the limits of any place for the purposes of this section ;

and the Magistrate of the District, after enquiry if necessary, shall, subject to the orders of the Local Government, assess the proportion in which such cost is to be paid by the said inhabitants according to his judgment of their respective means.

All monies payable under this section shall be recoverable either under the warrant of a Magistrate by distress and sale of the goods of the defaulter within the local limits of such Magistrate's jurisdiction, or by suit in any competent Court, and shall be applied to the maintenance of the police-force, or otherwise as the Governor-General in Council may from time to time direct.*

Penalty for omitting to transmit or deliver message.

17. Any telegraph officer who—

wilfully secretes, makes away with, alters, or omits to transmit, any message which he may have received for transmission or delivery, or

wilfully, or otherwise than by the official order of a Secretary to the

Government of India or to the Local Government, Government of India or to the Local Government, For intercepting or divulging messages

or of such other officer as the Governor-General in Council authorizes to give such order, intercepts any message or any part thereof, or divulges any message, or the purport of any message or of any part thereof, to any person not entitled to receive the same, or

For divulging purport of signals.

divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

shall be liable to imprisonment for a term not exceeding three years, or to fine, or to both,

18. Every telegraph officer shall be deemed a public servant within

the meaning of sections 161, 162, 163, 164, and 165 of the Indian Penal Code. And in the definition of "legal remuneration" contained in the said section 161,

the word "Government" shall, for the purposes of this Act, be deemed to include a person or Company licensed under this Act.

* Compare Act V. of 1861, ss. 14 and 15, see *supra*, p. 16.

19. Any telegraph officer guilty of any act of drunkenness, carelessness, or other misconduct, whereby the transmission or delivery of any message is endangered, or who loiters or makes delay in the transmission or delivery of any message, shall be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding one hundred rupees, or to both.

20. Any telegraph officer who transmits by telegraph any message upon which the prescribed charge has not been paid, intending thereby to defraud the Government, shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.

21. Whoever transmits or causes to be transmitted by a telegraph a message which he knows to be false or fabricated, shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.

22. Whoever fraudulently retains, or wilfully secretes, or makes away with, or keeps, or detains, a message &c., delivered by mistake, which ought to have been delivered to some other person,

or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, shall be liable to imprisonment for a term which may extend to two years, or to fine, or to both.

23. Whoever abets, within the meaning of the Indian Penal Code any offence under this Act, and whoever attempts to commit, offences. attempts to commit any such offence, shall be punishable with the punishment herein provided for such offence.

ACT NO. V. OF 1876.

THE REFORMATORY SCHOOLS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH FEBRUARY 1876.

*An Act to provide Reformatory Schools.**

Preamble. WHEREAS it is expedient to provide Reformatory Schools for male youthful offenders; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Reformatory Schools Act, 1876."

Local extent.

It extends to the whole of British India;

And it shall come into force in each Province of British India on such day as the Local Government by notification in the official Gazette directs in that behalf.

Commencement.

Section 318 of Code of Criminal Procedure repealed.

2. On and from that day section 318 of the Code of Criminal Procedure shall be repealed therein.†

Interpretation-clause.

3. In this Act—

"Youthful offender" means any boy who, being at the time under the age of sixteen years, has been convicted of any offence punishable with imprisonment or transportation;

"Inspector-General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector of Jails.

II.—Reformatory Schools.

Power to establish and discontinue Reformatory Schools.

4. With the previous sanction of the Governor-General in Council, the Local Government may—

- (a) establish Reformatory Schools at such places as it thinks fit,
- (b) use as Reformatory Schools, schools kept by persons willing to act in conformity with such rules consistent with this act as the Local Government may from time to time prescribe in this behalf,
- (c) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of schools.

5. Every school so established or used must provide—

- (a) sufficient means of separating the inmates at night;
- (b) proper sanitary arrangements, water-supply, food, clothing, and bedding for the youthful offenders detained therein;
- (c) the means of giving such offenders industrial training;
- (d) an infirmary or proper place for the reception of such offenders when sick.

* See 29 & 30 Vic., c. 117.

† Act X. of 1875, s. 112, should also have been repealed.

6. Every Reformatory School shall, before being used as such, be inspected by the Inspector-General of Jails; and if he reports that the requirements of section five have been complied with, and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, and the school shall thereupon be deemed a Reformatory School.

Every such school shall from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may from time to time prescribe.

7. Whenever any youthful offender is sentenced to transportation or imprisonment, and is, in the judgment of the Court by which he is sentenced, (a) under the age of sixteen years, and (b) a proper person to be an inmate of a Reformatory School, the Court may direct that, instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall be not less than two years and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

The powers so conferred on the Court shall be exercised only by (a) the High Court, (b) the Court of Session, (c) a Magistrate of the first class, and (d) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras, and Bombay.

8. Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the Jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such Jail is situate; and the Magistrate, if he thinks the offender (a) under the age of sixteen years and (b) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

In this section "Magistrate" means, in the towns of Calcutta, Madras, and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the first class.

9. Every youthful offender so directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.

10. Nothing contained in section seven, eight, or nine, shall be deemed to authorize the detention in a Reformatory School of any person after he is proved to be above the age of eighteen years.

Discharge or removal by order of Government.

11. The Local Government may at any time order any youthful offender—

(a) to be discharged from a Reformatory School ;

(b) if so discharged before the expiration of his sentence, to undergo the residue of such sentence at such place as the Local Government thinks fit ; or

(c) to be removed from one Reformatory School to another, such school situate within the territories subject to such Government, but so that the whole period of his detention in a Reformatory School shall not be increased by such removal.

III.—Management of Reformatory Schools.

Appointment of Superintendent and Committee of Visitors or Board of Management.

12 For the control and management of every Reformatory School, the Local Government shall appoint either (a) a Superintendent and a Committee of Visitors, or (b) a Board of Management.

Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be natives of India.

The Local Government may from time to time suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

13. Every Superintendent so appointed may permit any youthful

Superintendent may license youthful offenders to employers of labour

offender sent to a Reformatory School who has attained the age of fourteen years, by license under his hand, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour, and willing to receive and take charge of him, on the condition that the employer shall keep such offender employed at some trade, occupation, or calling.

The license shall be in force for three months and no longer, but may, at any time before the expiration of the period for which the offender has been directed to be detained, be renewed from time to time for three months.

Cancellation of license.

14. The license shall be cancelled at the desire of the employer named in the license ;

and if it appears to

the Superintendent that any complaint made by the employer of misconduct on the part of the youthful offender is just, no other license in respect of the same offender shall be given

If complaint of employers just, no fresh license until expiry of twelve months.

until twelve months after the expiration of the former license.

15. If during the term of the license the employer named therein

Determination of license.

die, or cease from business, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

16. If it appears to the Superintendent that the employer has

Cancellation of license in case of ill-treatment.

ill-treated the offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

17. The Superintendent of any Reformatory School shall be

Superintendent to be deemed guardian of youthful offenders. deemed the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX. of 1850 (*concerning the binding of apprentices*);

and if it appear to the Superintendent that any such offender

Power to apprentice youthful offender. licensed under section thirteen has behaved well during one or more periods of his license, the Superintendent may apprentice him under the provisions of the said Act, and on such apprenticeship the right to detain such offender in the school shall cease, and the unexpired term (if any) of his sentence shall be cancelled.

18. Every Committee of Visitors appointed under section twelve

Duties of Committee of Visitors. for any Reformatory School shall, at least once in every month,

(a) visit the school, to hear complaints, and see that the requirements of section five have been complied with, and that the management of the school is proper in all respects,

(b) examine the punishment-book,

(c) bring any special cases to the notice of the Inspector-General, and

(d) see that no person is illegally detained in the school.

19. If in exercise of the power conferred by section twelve, the

Powers of Board of Management. Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections thirteen to seventeen, both inclusive; and the license mentioned in section thirteen may be under the hand of their Chairman, and they shall be deemed to be the guardians of the youthful offenders detained in such school.

20. The Local Government may declare any body of Trustees or

Power to appoint Trustees or other Managers of a school to be a Board of Management. Managers of a school, who are willing to act in conformity with the rules referred to in section four, clause (b), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

21. With the previous sanction of the Local Government, every

Power of Board to make rules. Board of Management of a Reformatory School may from time to time make rules consistent with this Act to regulate—

(a) the conduct of business of the Board,

(b) the management of the school,

(c) the education and industrial training of youthful offenders,

(d) visits to and communication with youthful offenders,

(e) punishments for offences committed by youthful offenders,

(f) the granting of licenses for employment of youthful offenders.

In the absence of a Board of Management, the Local Government may from time to time make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in clauses (b),

(c), (d), (e), and (f), of this section, and also the mode in which the Committee of Visitors shall conduct their business.

22. The Governor-General in Council may from time to time make

Power of Government of India to make rules. rules consistent with this Act for regulating the periods for which Courts and Magistrates may send youthful offenders to Reformatory Schools according to their ages, the nature of their respective offences, or other considerations.

All rules made under this section shall be published in the *Gazette of India*.

IV.—Offences in relation to Reformatory Schools.

23. Whoever abets an escape, or an attempt to escape, on the

Penalty for abetting escape of youthful offender. part of a youthful offender from a Reformatory School, or from the employer of such offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one hundred rupees, or with both.

24. A police officer may, without orders from a Magistrate, and

Arrest of escaped youthful offenders. without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school, or from his employer, and take him back to such school or to his employer.

ACT NO. VIII. OF 1876.

THE NATIVE PASSENGER SHIPS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1876.

An Act to consolidate and amend the law relating to Native Passenger Ships.

WHEREAS it is expedient to consolidate and amend the law relating to Native Passenger Ships : It is hereby enacted
Preamble. as follows :—

CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called “The Native Passenger Ships Act, 1876.”

Extent and application of Act.

2. It extends to the whole of British India, and applies—

(a) to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty ;

(b) to all native Indian subjects of Her Majesty without and beyond British India ; and,

(c) subject to the exceptions mentioned in the subsequent part of this section, to vessels carrying more than thirty passengers, being natives of Asia or Africa.

Nothing herein contained applies—

(d) to any ship-of-war or transport belonging to, or in the service of, Her Majesty ;

(e) to any ship-of-war belonging to any Foreign Prince or State ;

(f) to any sailing-vessel not carrying as passengers more than thirty natives of Asia or Africa ;

(g) to any steamer not carrying as passengers more than sixty of such natives ;

(h) to any sailing-vessel or steamer not intended to convey passengers to or from any port in British India.

3. This Act shall come into force on such day as the Governor-General in Council directs by notification in the
Commencement. *Gazette of India.*

Repeal of Acts.

4. On and from that day the Acts specified in the schedule hereto annexed shall be repealed.

But all ports, places, and officers appointed, and all certificates granted, under any of such Acts, shall be deemed to be respectively appointed and granted under this Act ;

and the last clause of section one of Act No. II. of 1860 (*to amend the law relating to the Carriage of Passengers by Sea*) shall be read as follows:—

“Voyages from ports in British India to ports in the Red Sea or Persian Gulf, under the Native Passenger Ships Act, 1876.”

Interpretation-clause.

5. In this Act—

the expression “Magistrate” means a person exercising powers not inferior to those of a Magistrate of the second class, and includes a Justice of the Peace, and, at the Port of Aden, the Political Resident and his Assistants:

the expression “ship” includes every description of vessel used in navigation not propelled by oars:

the expression “master” includes every person (other than a pilot) having command or charge of a ship:

the expression “passenger” means a person above the age of twelve years, or two persons between the ages of one year and twelve years; but it does not include a person in attendance on another person who is not a native of Asia or Africa, nor a child under one year of age:

the expression “voyage” means the whole distance between the ship’s port of departure and her final port of arrival:

the expression “long voyage” means any voyage during which the ship performing it will, under ordinary circumstances, be one hundred and twenty hours or upwards continuously out of port:

the expression “short voyage” means any voyage during which the ship performing it will never, under ordinary circumstances, be one hundred and twenty hours continuously out of port:

Illustration.

A ship starts from port A. and is destined finally to arrive at port B. between which ports the ordinary distance is ten days: but she is to touch at four intermediate ports, no one of which is, under ordinary circumstances, more than five days from the next one. This is a short voyage.

the expression “Chief Officer of Customs” means the executive officer of highest rank in the Department of Customs in any port to which this Act applies.

CHAPTER II.—RULES FOR ALL VOYAGES.

6. No ship carrying passengers shall depart or proceed from, or shall discharge passengers at, any port or place within British India other than such ports and places as the Local Government may from time to time appoint in this behalf;

and after any ship has departed or proceeded upon any voyage from a port or place so appointed, no person shall be received on board as a passenger, except at some other port or place so appointed.

7. The master, owner, or agent of every ship so departing or proceeding shall give notice to an officer authorized in this behalf by the Local Government that the ship is to carry native passengers, and of her destination, and of the proposed time of sailing;

such notice shall be given not less than twenty-four hours before such time.

8. After receiving such notice, the officer aforesaid, or any person authorized by him, shall be at liberty at all times to enter and inspect the ship and the fittings, provisions, and stores therein.

9. No ship intended to carry passengers shall commence any voyage from any port or place appointed under this Act, unless the master holds two certificates to the effect hereinafter mentioned.

And the officer of Government whose duty it is to grant a port-clearance for such ship shall not grant the same unless the master holds such certificates.

10. The first of such certificates (hereinafter called 'certificate A') shall state that the ship is seaworthy and properly equipped, fitted, and ventilated; and the number of passengers that she is capable of carrying.

11. The second of such certificates (hereinafter called 'certificate B') shall state —

(a) the voyage which the ship is intended to make, and the intermediate ports (if any) at which she is intended to touch;

(b) that she has the proper complement of officers and seamen;

(c) that provisions, fuel, and pure water, over and above what is necessary for the crew, and the other things (if any) prescribed for the ship by rule under section forty-six, have been placed on board, of the quality prescribed by rule under the same section, properly packed, and sufficient to supply the passengers on board during the declared duration of the intended voyage, according to the scale for the time being prescribed by rule under the same section;

(d) that the master holds certificate A;

(e) if she is intended to make a short voyage in a season of foul weather, and to carry upper-deck passengers, that she is furnished with substantial bulwarks and a double awning or other sufficient protection against the weather;

(f) such other particulars (if any) as may for the time being be required for such ship under this Act.

Grant of certificate B.

12. The person by whom certificate B is to be granted shall in all cases be the officer referred to in section seven.

13. The person by whom certificate A is to be granted shall be the officer aforesaid, except that, if the master of a ship produce to such officer either of the following certificates (namely) —

(a) a valid certificate granted by the Board of Trade or by any British Colonial Government;

(b) a certificate granted under the authority of any British Indian Government, and dated not more than six months before the proposed day of sailing,

and if the particulars required by section ten are certified thereby,

such officer may take any such certificate as evidence of such particulars, and it shall then be a valid certificate for the purposes of this Act.

14. After receiving the notice required by section seven, the officer aforesaid may, if he think fit, cause the ship to be surveyed at the expense of the master or owner by competent surveyors, who shall report to him whether the ship is, in their opinion, seaworthy and properly equipped, fitted, and ventilated for her intended voyage:

Provided that he shall not cause any ship holding any certificate mentioned in section thirteen, clause (a) or clause (b), to be surveyed, unless, from the ship having met with damage or having undergone alterations, or on other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted, or ventilated for her intended voyage.

If the officer aforesaid causes a survey to be made of any vessel holding any such certificate, and if the surveyors report that the vessel is seaworthy and properly equipped, fitted, and ventilated for her intended voyage, and that there was no reasonable ground why the officer aforesaid should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted, or ventilated for her intended voyage, the expense of the survey shall be paid by the Local Government.

15. The officer authorized to grant a certificate under this Act, in respect of any ship, shall not grant the same unless he is satisfied that she has not on board any cargo likely from its quality, quantity, or mode of stowage, to prejudice the health or safety of the passengers.

But, save as aforesaid, and subject to the provisions of section sixteen, the grant or withholding of a certificate under this chapter shall in all cases be in the discretion of the officer aforesaid.

16. In the exercise of such discretion such officer shall be subject to the control of the Local Government, or of any intermediate authority which that Government may from time to time appoint in this behalf.

17. The owner or master shall put up in a conspicuous part of the ship, so as to be visible to persons on board the same, a copy of each of the said certificates granted by an officer appointed under this Act in respect of the ship, and shall keep such copies in such position during the voyage.

18. The requirements of this Act respecting the supply of provisions for passengers shall not, except as to the supply of water, be applicable to any passenger who has contracted to furnish his own provisions, and who has, in the opinion of such officer as the Local Government appoints in this behalf, actually furnished such provisions of the quality and to the amount for the time being prescribed by rules made

CHAPTER III.—RULES FOR SHORT VOYAGES.

19. For seasons of fair weather, every ship performing a short

Space to be provided for intermediate or between-decks passengers.

voyage shall contain in the between-decks at least six superficial feet and thirty-six cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper-deck at least four superficial feet for each such passenger and six superficial feet for each upper-deck passenger.

For seasons of foul weather, every ship propelled by sails and performing a short voyage shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper-deck at least four superficial feet for each such passenger and twelve superficial feet for each upper-deck passenger.

For seasons of foul weather, every ship propelled by steam, or partly by steam and partly by sail, and performing a short voyage, shall contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper-deck at least four superficial feet for each such passenger and nine superficial feet for each upper-deck passenger.

But in such seasons no ship shall carry upper-deck passengers unless she is furnished with substantial bulwarks and a double awning or other sufficient protection against the weather.

20. If any ship performing a short voyage takes any additional

Ship taking additional passengers at intermediate port.

passengers on board at any intermediate port or place, the master shall obtain a supplementary certificate from the proper officer at such port, stating—

(a) the number of passengers so taken on board, and

(b) that provisions, fuel, and pure water (over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by rule under section forty-six) have been placed on board, of the quality prescribed by rule under the same section, properly packed, and sufficient to supply the total number of passengers on board during the declared duration of the intended voyage, according to the scale for the time being prescribed by rule under the same section :

Provided that, if the certificate B held by the master of such ship states that provisions, fuel, and pure water, over and above what is necessary for the crew, and the other things, if any, prescribed for her by rule under section forty-six, have been placed on board, of the quality prescribed by rule under the same section, properly packed and sufficient to supply the full number of passengers that she is capable of carrying, the master shall not be bound to obtain any such supplementary certificate.

21. When the ship reaches her final port of arrival, the master

Report of deaths on the voyage.

shall notify to such officer as the Governor-General in Council may appoint in this behalf, the date and supposed cause of death of every passenger dying on the voyage.

CHAPTER IV.—RULES FOR LONG VOYAGES.

22. Every ship propelled by sails, and performing a long voyage, shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space for every passenger.

Every ship propelled by steam, or partly by steam and partly by sails, and performing a long voyage, shall contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space for every passenger.

23. The master of every such ship, before departing or proceeding on any long voyage from any port or place in British India, shall sign two statements, specifying the number and the respective sexes of all the passengers, and stating the number of the crew; and shall deliver them to the officer last aforesaid, who shall thereupon (after having first satisfied himself that the numbers are correct) countersign and return to the master one of such statements.

24. The master shall note in writing on such last-mentioned statement, and on any additional statement to be made under the next following section, the date and supposed cause of death of any passenger who may die on the voyage, and shall forthwith, on the arrival of the ship at her destination or at any port at which it may be intended to land passengers, and before any passengers are landed, produce the statement, with any additions thereto made, to any person lawfully exercising consular authority on behalf of Her Majesty at the port of arrival if it be a foreign port, or to the Chief Officer of Customs, or the officer (if any) appointed under this Act to receive such statements, at any port or place at which it is intended to land the passengers or any of them.

25. If, after the ship has departed or proceeded on any long voyage, any additional passengers are taken on board at a port or place within British India appointed under this Act for the embarkation of passengers,

or if such ship upon her voyage touch or arrive at any such port, having previously received on board additional passengers at any place without British India,

the master shall obtain a fresh certificate to the effect of certificate B from the proper officer at such port, and shall make additional statements specifying the number and the respective sexes of all such additional passengers;

and all the provisions hereinbefore contained in that behalf shall be applicable to any certificate granted or statement made under this section.

26. In the case of every ship sailing from any port within British India to any port in the Red Sea, the officer whose duty it is to grant a port-clearance for any such ship shall not grant such clearance unless and until the owner

agent, or master of such ship, and two sureties resident in British India, have, by a joint and several bond, become bound, unto the Secretary of State for India in Council in the penal sum of five thousand rupees for the purpose of binding the ship to touch at Aden on the outward voyage, and there to obtain a clean bill of health, and to do the same on the homeward voyage if she continue (being propelled by sails) to carry more than thirty passengers, or (being propelled by steam or partly by steam and partly by sails) to carry more than sixty passengers.

Ships sailing to or from port in Red Sea to touch at Aden.

27. Every ship carrying more than thirty passengers being natives of Asia or Africa, and sailing from any port in British India to any port in the Red Sea,

or sailing from any port in the Red Sea to any port in British India,

shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

28. No bill of health shall be granted under section twenty-six or section twenty-seven in case the ship has on board a greater number of passengers than in the proportion prescribed for her by this Act.

Bill of health.

CHAPTER V.—PENALTIES.

29. If any ship departs or proceeds upon a voyage from, or discharges passengers at, any port or place within British India in contravention of the provisions of section six or section nine,

Penalty for ship unlawfully departing.

or if any person is received as a passenger on board a ship in contravention of the provisions of the second clause of section six,

the owner or master shall, for every passenger conveyed in such ship, or for every passenger so discharged or received on board, be liable to a penalty not exceeding one hundred rupees, or to imprisonment not exceeding one month, or to both ;

and the ship, if found within two years in any port within British India, may be seized and detained by any Chief Officer of Customs until the penalties incurred under this Act by her owner or master have been adjudicated, and the payment of the fines imposed on him under this Act, with all costs, has been enforced, under the provisions herein-after contained.

30. Any person impeding or refusing to allow the entry or inspection authorized under this Act shall be liable to a fine not exceeding five hundred rupees for each offence, or to imprisonment for a term not exceeding three months, or to both.

Penalty for opposing entry on or inspection of ships.

31. Any owner or master wilfully failing to comply with the requirements of section seventeen, as to copies of certificates, shall, for every such failure, be liable to fine not exceeding two hundred rupees, or to imprisonment for any term not exceeding a month, or to both.

Penalty for not exhibiting copy of certificate.

Penalty for non-compliance with requirements as to list of passengers.

or wilfully making

or wilfully failing to obtain any such supplementary certificate as

Penalty for failing to obtain fresh certificate for additional passengers taken.

any such statement of the number of additional passengers as is mentioned in section twenty-five,

shall be liable to a fine not exceeding five hundred rupees for every such offence, or to imprisonment for a term not exceeding three months, or to both.

33. Any master who, after having obtained any of the certificates

Penalty for fraudulent alteration in ship after certificate obtained.

mentioned in section nine, or section twenty, or section twenty-five, fraudulently does or suffers to be done anything whereby such certificate becomes inapplicable to the altered state of the ship, her passengers, or other matters to which such certificate relates, shall be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding six months, or to both.

34. Any master wilfully, and without satisfactory excuse, omitting

Penalty for failing to supply passengers with prescribed provisions.

to supply to any passenger the allowance of food, fuel, and water prescribed by rule made under this Act and for the time being in force, shall be liable to a fine not exceeding twenty rupees for every passenger who has sustained detriment by such omission.

35. The master of any ship described in section twenty-seven, who

Penalty for not obtaining bill of health.

wilfully fails to touch at Aden, or leaves that port without having obtained the bill of health therein mentioned, shall, for every such offence, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding six months, or to both.

36. If any ship has on board any number of passengers which,

Penalty for excess of number specified in certificate.

having regard to the time of the year and other circumstances, is greater than the number allowed by the certificate, or, if arriving from a port where no certificate could be procured, has on board a number of passengers exceeding the number allowed by this Act for such ship, the owner and master shall, for every passenger over and above the number allowed by the certificate, be each liable to a fine not exceeding twenty rupees, and the master shall further be liable for each of such passengers to imprisonment not exceeding one week: Provided that the total term of imprisonment awarded under this section shall in no case exceed six months.

Any officer authorized in this behalf by the Local Government may cause all passengers over and above such number to disembark, and may forward them to any port of British India, and may recover

the cost of so forwarding them from the owner or master of the ship as if such cost was a fine imposed under this Act, and a certificate under the hand of such officer shall be conclusive evidence of the amount of the cost aforesaid.

37. If any ship bringing native passengers from any port or place beyond British India, into any port or place in British India, has on board a greater number of passengers than in the proportion prescribed by section nineteen, section twenty-two, or section forty-nine (as the case may be), or than the number allowed by the license or certificate (if any) granted in respect of such ship at her port or place of departure, the owner and master shall, for every passenger in excess of such proportion or of the number so allowed, be each liable to a fine not exceeding twenty rupees.

Penalty for bringing native passengers from Eastern port in excess of authorized proportion.

38. If the master of any ship to which this Act applies lands any passenger at any port or place other than the port or place at which he may have contracted to land, unless with his previous consent, or unless such landing is made necessary by perils of the sea or other unavoidable accident, the master shall for every such offence, be liable to a penalty not exceeding two hundred rupees, or to imprisonment for any term not exceeding a month, or to both.

Penalty for landing passenger at a place other than that at which he has contracted to land.

Procedure.

39. All offences against this Act shall be punishable in a summary manner by a Magistrate.

Adjudication of offences.

If the person on whom any fine is imposed under this Act is the master or owner of a ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture, and apparel.

Fine leviable by distress on ship.

40. For the purpose of the adjudication of penalties under this Act every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

Jurisdiction.

41. The penalties to which masters and owners of ships are made liable by this Act shall be enforced only by information laid at the instance of the officers appointed to grant certificates under this Act; or, at any port or place where there is no such officer, at the instance of the Chief Officer of Customs.

By whom proceedings for penalties to be instituted.

42. Any Magistrate imposing any fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may have sustained by the act or default in respect of which such fine is imposed, or in or towards payment of the expenses of the proceedings.

Application of fines.

43. Whenever, in the course of any legal proceeding under this Act, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition that he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where such proceedings are instituted), or any British consular officer elsewhere, shall be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceeding is instituted:

Provided that such deposition shall not be admissible unless—

- (a) it is authenticated by the signature of the Justice, Magistrate, or consular officer;
- (b) it was made in the presence of the person accused; and
- (c) the fact that it was so made is certified by the Justice, Magistrate, or consular officer.

It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

CHAPTER VI.—MISCELLANEOUS.

44. The Chief Officer of Customs, or the officer (if any) appointed under this Act, at any port or place within British India at which any ship to which this Act applies touches or arrives, shall, with advertence to the provisions herein contained, send any particulars which he may deem important respecting the ship and the passengers conveyed therein, to the officer at the port from which the ship commenced her voyage, and also to the officer at any other port within British India where the passengers or any of them embarked.

And any officer appointed under this Act may, at any port or place in British India at which any ship to which this Act applies touches, board such ship, and inspect her in order to ascertain whether the provisions of this Act as to the number of passengers and otherwise have been complied with.

45. In any proceeding for the adjudication of any penalty incurred under this Act, any document purporting to be a report of such particulars or a copy of the proceedings of any Court of justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if the same appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

46. The Governor-General in Council may from time to time make rules, consistent with this Act, to regulate, in the case of any ship or class of ships to which this Act applies, all or any of the following matters:—

(a) the scale on which provisions, fuel, and water are to be supplied to the passengers, and the quality of such provisions, fuel, and water ;

(b) the medical stores and other appliances and fittings for maintaining health, cleanliness, and decency to be provided on board ;

(c) the boats, anchors, and cables to be provided on board ;

(d) the instruments for purposes of navigation to be supplied ;

(e) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent such fires ;

(f) and generally to carry out the provisions of this Act.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

47. The Local Government shall appoint such persons as it thinks fit to exercise and perform the powers and duties conferred and imposed by this Act.

Appointment of officers.

48. The Governor-General in Council may from time to time declare, by notification in the *Gazette of India*, what shall be deemed 'seasons of fair weather' and 'long voyages.' *Act, "seasons of fair weather" and "seasons of foul weather," and for sailing vessels and steamers respectively, a "long voyage" and a "short voyage."*

Power to declare what shall be deemed 'seasons of fair weather' and 'long voyages.'

49. The Governor-General in Council may from time to time direct, in the case of any ship or class of ships, and for all or any voyages to which this Act applies, the number of superficial or of cubic feet of space to be contained for the passengers ; and such direction shall override the provisions of sections nineteen and twenty-two so far as they apply to such ship or class of ships.

Power to prescribe space to be contained for passengers.

SCHEDULE.

(See section 4.)

Number and year.	Title.
XXV. of 1859 	An Act to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal.
XII. of 1870 	An Act for the regulation of Native Passenger Ships, and of Steam Vessels intended to convey Passengers on coasting voyages.
XII. of 1872 	An Act to amend Act XII. of 1870 (<i>The Native Passenger Ships Act</i>).
Madras Act II. of 1862 ...	An Act to extend the provisions of Act XXV. of 1859, entitled "An Act to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal."

ACT NO. III. OF 1877.

THE INDIAN REGISTRATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH FEBRUARY 1877.

An Act for the registration of documents.

WHEREAS it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows :—

Preamble.

PART XV.—OF PENALTIES.

81. Every registering officer appointed under this Act, and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for incorrectly endorsing, copying, translating, or registering documents with intent to injure.

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both :

Penalty for certain other offences.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ;

Making false statements before registering officer.

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ;

Delivering false copy or translation.

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act ;

False personation.

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

Abetment of offences under this Act.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of

Registering officer may commence prosecutions.

Sindh, the registrar, or the sub-registrar, in whose territories, district, or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate* of the second class :

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force.

84. Every registering officer appointed under this Act shall be

Registering officers to be deemed a public servant within the meaning of
deemed public servants. the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

A registrar shall, but a sub-registrar shall not, as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure.

* The words, "Magistrate of the second class," have been substituted for the words, "Subordinate Magistrate of the first class," by Act XII. of 1879, s. 106.

ACT NO. I. OF 1878.

THE OPIUM ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH JANUARY 1878.

An Act to amend the law relating to Opium.

Preamble. WHEREAS it is expedient to amend the law relating to opium ;
It is hereby enacted as follows :—

Short title. 1. This Act may be called “The Opium Act, 1878 ;”

Local extent. It shall extend to such local areas as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time direct ;

Commencement. And it shall come into force in each of such areas on such day as the Governor-General in Council in like manner directs in this behalf.

Repeal of enactments. 2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule ;

Amendment of Acts. And in Acts No. XI. of 1849, No. XXI. of 1856, and No. X. of 1871, and in Bengal Act No. II. of 1876, the words “intoxicating drugs” (wherever they occur) shall not include opium.

Amendment of Act VII. of 1836, s. 1. The reference made to Bombay Regulations XXI. of 1827 and XX. of 1830 in Act No. VII. of 1836 shall be read as if made to the corresponding sections of this Act.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context—

“Opium” includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy :

“Magistrate” means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a Magistrate of the first class or (in specially empowered by the

Local Government to try cases under this Act) a Magistrate of the second class.

“Import” means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by

any other Local Government.

“Export” means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government.

“Transport” means to remove from one place to another within the territories administered by the same Local Government.

4. Except as permitted by this Act, or by any other enactment

Prohibition of poppy cultivation and possession, &c., of opium.

relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

- (a) cultivate the poppy ;
- (b) manufacture opium ;
- (c) possess opium ;
- (d) transport opium ;
- (e) import or export opium ; or
- (f) sell opium.

5. The Local Government, with the previous sanction of the Go-

Power to make rules to permit such matters.

vernor-General in Council, may, from time to time, by notification in the local Gazette, make rules, consistent with this Act, to permit, absolutely or subject to the payment of duty or to any other conditions, and to regulate within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

- (a) the cultivation of the poppy ;
- (b) the manufacture of opium ;
- (c) the possession of opium ;
- (d) the transport of opium ;
- (e) the importation or exportation of opium ; and
- (f) the sale of opium, and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported, and on which a duty is imposed by or under the law relating to sea-customs for the time being in force or under section six.

6. The Governor-General in Council may, from time to time, by

Duty on opium imported by land.

notification in the *Gazette of India*, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

7. The Governor-General in Council may, by order notified in the *Gazette of India*,

(a) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and,

(b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, with the previous sanction of the Gover-

Power to make rules relating to warehouses.

nor-General in Council, may, from time to time, by notification in the local Gazette, make rules, consistent with this Act, to regulate the safe custody of opium warehoused under section seven; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, &c.

9. Any person who, in contravention of this Act, or of rules made and notified under section five or section eight,

- (a) cultivates the poppy, or
- (b) manufactures opium, or
- (c) possesses opium, or
- (d) transports opium, or
- (e) imports or exports opium, or
- (f) sells opium, or
- (g) omits to warehouse opium or removes or does any act in respect

of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished, for each such offence, with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

10. In prosecutions under section nine, it shall be presumed, until

Presumption in prosecution under section nine.

the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section nine has been committed—

- (a) the poppy so cultivated;
- (b) the opium in respect of which any offence under the same section has been committed;

(c) where, in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing, or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import, or export, as the case may be, the whole of the opium which he is transporting, importing, or exporting;

(d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages, and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any)

of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the District or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated, or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, make rules, consistent with this Act, to regulate—

Power to make rules regarding—
disposal of things confiscated and rewards.
(a) the disposal of all things confiscated under this Act; and
(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

14. Any officer of any of the departments of Excise, Police, Customs-Salt, Opium, or Revenue, superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept, or concealed in any building, vessel, or enclosed place, may, between sunrise and sunset,

(a) enter into any such building, vessel, or place;
(b) in case of resistance, break open any door and remove any other obstacle to such entry;

(c) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section eleven or any other law for the time being in force relating to opium; and

(d) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may

(a) seize, in any open place or in transit, any opium or other thing, which he has reason to believe to be liable to confiscation under section eleven or any other law for the time being in force relating to opium,

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain, search, and arrest.

16. All searches under section fourteen or section fifteen shall be made in accordance with the provisions of the Code of Criminal Procedure.

Searches how made.

17. The officers of the several departments mentioned in section fourteen shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Officers to assist each other.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches, or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

19. The Collector of the District, Deputy Commissioner, or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

Issue of warrants.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.

20. Every person arrested, and thing seized, under section fourteen

Disposal of person arrested or thing seized.

or section fifteen, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section nineteen shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Whenever any officer makes any arrest or seizure under this

Report of arrests and seizures.

Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

22. In the case of alleged illegal cultivation of the poppy, the crop

Procedure in case of illegal poppy-cultivation. shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever Act No. XIII. of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*), or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, &c.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue, may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

24. When any amount is due to a farmer of opium-revenue from

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

his licensee, in respect of a license, such farmer may make an application to the Collector of the District, Deputy Commissioner, or other officer authorized by the Local Government in this

behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner, or other officer, may, in his discretion, recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, Deputy Collector, or other officer for the recovery of such amount, shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

25. When any person, in compliance with any rule made hereunder,

Recovery of penalties due under bond.

gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject or title.	Extent of repeal.
Act XI. of 1849 ...	Abkárí Revenue of Calcutta.	In section 5, the word "opium." In section 6, the word "opium," and the last thirty-one words. In section 15, from and including the words "except in the case," to the end of the section. In section 33, from and including the words "except opium" down to and including the words "each seer;" and the words "or in the case of opium as aforesaid, a reward of one rupee eight annas for each seer."
Act III. of 1852 ...	Spirituons Liquors, Bombay.	Section 10, so far as it relates to opium.
Act XXI. of 1856 ...	Bengal Abkárí Act ...	In section 28, the word "opium." Sections 34, 51, 52, 53, and 87. In section 35, the words "or opium." In section 49, the words "except opium." Section 59, so far as it relates to opium. In section 75, the words "except opium," and from and including the words "opium seized," down to the end. In section 76, from and including the words "except opium," down to and including the words "each seer;" and from and including the words "or in," down to and including the words "each seer." In paragraph 8 of section 90, the words "and opium."
Act XIII. of 1857 ...	Cultivation of the poppy and manufacture of opium.	Section 2.
Act X. of 1871 ...	The Northern India Excise Act.	In paragraph 5 of section 3, the word "opium." Sections 18, 65, 66, 67, and 87. In section 19, the words "or opium." Section 46, so far as it relates to opium. In section 46, paragraph 3, from and including the words "as well as," down to and including the words "dealings in opium." In section 63, the words "except opium." In section 78, the words "except opium," and paragraph 2. In section 79, from and including the words "except opium," down to and including the words "each seer," and from and including the words "or in," down to and including the words "each seer."

SCHEDULE—(continued).

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL—(continued).

Number and year.	Subject or title.	Extent of repeal.
Act IV. of 1872 ...	The Panjáb Law Act.	Section 49.
Act XXVI. of 1872 ...	Panjáb Opium Law Amendment.	The whole Act.
Act VI. of 1873 ...	Transshipment of goods	Section 7.
Act XVI. of 1875 ...	The Indian Tariff Act.	Section 9.
Act XXIII. of 1876 ...	To amend the law relating to Opium.	The whole Act.
Act VI. of 1877 ...	For postponing the day on which the Opium Act, 1876, is to come into force.	The whole Act.

Act of the Lieutenant-Governor of Bengal in Council.

Number and year.	Subject.	Extent of repeal.
Act II. of 1876 ...	To amend Act XI. of 1849, Act XXI. of 1856, and Act IV. (B. C.) of 1866.	<p>In section 3, in the section substituted for section 33 of Act XI. of 1819, the words "except opium," and from and including the words "confiscated opium," down to and including the words "general order."</p> <p>In section 3, in the section substituted for section 34 of Act XI. of 1849, the words "except in the case of opium;" and from and including the words "and in the case of opium," down to and including the words "similarly distributed."</p> <p>In section 10, in the section substituted for section 75 of Act XXI. of 1856, the words "except opium," and from and including the words "confiscated opium," down to and including the words "general order."</p> <p>In section 10, in the section substituted for section 76 of Act XXI. of 1856, the words "except in the case of opium," and from and including the words "and in the case of opium," down to and including the words "similarly distributed."</p>

Bombay Regulations.

Bombay Regulation XXI. of 1827.	Duty on opium ...	The preamble from and including the words "with the combined," down to and including the words "the prohibited."
Bombay Regulation XX. of 1830.	Malwa opium ...	Chapters I., II., III., and IV. So much as has not been repealed.

ACT NO. VII. OF 1878.

THE INDIAN FOREST ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1878.

An Act to amend the law relating to forests, the transit of forest-produce, and the duty leviable on timber.

Preamble. WHEREAS it is expedient to amend the law relating to forests, the transit of forest-produce, and the duty leviable on timber; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called “The Indian Forest Act, 1878:”

Commencement. It shall come into force at once in the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces, the North-Western Provinces, and the Panjáb (except the District of Hazára), and the Chief Commissioners of Oudh, the Central Provinces, and Assam.

Extension. And any other Local Government may, from time to time, with the previous sanction of the Governor-General in Council, extend, by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration.

Repeal of enactments. On and from the date on which this Act comes into force in any of the said territories, the enactments mentioned in the schedule hereto annexed shall be repealed in such territories. But all rules made under, or validated by, any of the said enactments, and in force at the date of such repeal, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Interpretation-clause. 2. In this Act, unless there be something repugnant in the subject or context,—

“Forest-officer” means any person whom the Governor-General in Council, or the Local Government, or any officer empowered by the Governor-General in Council or the Local Government in this behalf, may, from time to time, appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made under this Act to be done by a forest-officer:

“Tree” includes bamboos, stumps, and brushwood:

“Timber” includes trees and bamboos when they have fallen or have been felled, and all wood, whether cut up, or fashioned, or hollowed-out for cart-wheels, mortars, canoes, or other purposes, or not:

“Forest-produce” includes the following when found in, or brought from, a forest, that is to say,—

minerals (including limestone and laterite), surface-soil, trees, timber, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, roots, juice, catechu, bark, honey, wax, lac, caoutchouc, gum, wood oil, grass-oil, resin, varnish, silk worms and cocoons, shells, skins, tusks, bones, and horns :

“Forest-offence” means an offence punishable under this Act, or under any rule made under this Act :

“Cattle” includes elephants, camels, buffalos, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids :

“River” includes streams, canals, creeks, and other channels, natural or artificial.

CHAPTER II.

OF RESERVED FORESTS.

3. The Local Government may from time to time constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. Whenever it is proposed to constitute any land a reserved forest, Notification by Local Government. the Local Government may publish a notification in the local official Gazette—

(a) declaring that it is proposed to constitute such land a reserved forest ;

(b) specifying the limits of such forest ; and

(c) appointing an officer (hereinafter called “the forest-settlement-officer”) to inquire into and determine the existence, nature, and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this chapter.

Explanation 1.—For the purpose of clause (b) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges, or other well-known or readily intelligible boundaries.

The officer appointed under clause (c) of this section shall ordinarily be a person not holding any forest-office except that of forest-settlement-officer.

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a forest-settlement-officer under this Act.

5. During the interval between the publication of such notification and the date fixed by the notification under section nineteen, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into

Bar of accrual of forest-rights.

by or on behalf of Government or some person in whom such right was vested when the former notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land.

6. When a notification has been issued under section four, the Proclamation by forest-settlement-officer shall publish in the settlement-officer. language of the country, in every town and village in the neighbourhood of the land comprised therein, a proclamation—

(a) specifying the limits of the proposed forest;

(b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section four or five either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. The forest-settlement-officer shall take down in writing all Enquiry by forest-settlement-officer. statements made under section six, and shall, at some convenient place, enquire into all claims duly preferred under that section, and the existence of any rights mentioned in section four or five, and not claimed under section six, so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. For the purposes of such enquiry, the Powers of forest-settlement-officer. forest-settlement-officer may exercise the following powers, that is to say:—

(a) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate, and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

9. Rights in respect of which no claim has been preferred under Extinction of rights. section six, and of the existence of which no knowledge has been acquired by enquiry under section seven, shall be extinguished, unless before the notification under section nineteen is published the person claiming them satisfies the forest-settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section six.

10. In the case of a claim to a right in or over any land, other Power to acquire land than a right of way or pasture, or to forest- over which right is claimed. produce or a water-course, the forest-settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

If such claim is admitted in whole or in part, the forest-settlement-officer shall either (1) exclude such land from the limits of the proposed forest; or (2) come to an agreement with the owner thereof for the surrender of his rights; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(a) the forest-settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section nine of that Act;

(c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

11. In the case of a claim to rights of pasture or to forest-produce, the forest-settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Order on claims to rights of pasture or to forest-produce.

12. The forest-settlement-officer, when passing any order under section eleven, shall record; so far as may be practicable,—

Record to be made by forest-settlement-officer.

(a) the name, father's name, caste, residence, and occupation of the person claiming the right;

(b) the designation, position, and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

13. If the forest-settlement-officer admits in whole or in part any claim under section eleven, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorized to take or receive, or such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

Record where he admits claim.

14. After making such record, the forest-settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose, the forest-settlement-officer may—

Exercise of rights admitted.

(a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

(b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or

(c) record an order, continuing to such claimants a right of pasture or to forest-produce (as the case may be), to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may from time to time be prescribed by the Local Government.

15. In case the forest-settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section fourteen as shall ensure the continued exercise of the said rights to the extent so admitted, he shall (subject to such rules as the Local Government may from time to time prescribe in this behalf) commute such rights, either by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

16. Any person who has made a claim under this Act, or any forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the forest-settlement-officer under section ten, eleven, fourteen, or fifteen, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders :

Provided that if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest-Court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court.

17. Every appeal under section sixteen shall be made by petition in writing, and may be delivered to the forest-settlement-officer, who shall forward it without delay to the authority competent to hear the same.

If the appeal be to an officer appointed under section sixteen, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

If the appeal be to the Forest-Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

The order passed thereon by such officer or Court, or by the majority of the members of such Court, shall be final, subject to revision by the Local Government.

18. The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead, and act on its or his behalf before the forest-settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

19. When the following events have occurred (namely),—

(a) the period fixed under section six for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the forest-settlement-officer ; and

(b) if such claims have been made, and the period limited by section sixteen for appealing from the orders passed on such claims has

elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and

(c) all lands (if any) to be included in the proposed forest, which the forest-settlement-officer has, under section ten, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act,

the Local Government may publish a notification in the local official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

20. The forest-officer shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in every town and village in the neighbourhood of the forest.

Publication of translation of such notification in neighbourhood of forest.

21. The Local Government may, within five years from the publication of any notification under section nineteen, revise any arrangement made under section fourteen or seventeen, and may, for this purpose, rescind or modify any order made under section fourteen or seventeen, and direct that any one of the proceedings specified in section fourteen be taken in lieu of any other of such proceedings, or that the rights admitted under section eleven be commuted under section fifteen.

Power to revise arrangement made under section 14 or 17.

22. No right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of the Government or of some person in whom such right was vested when the notification under section nineteen was issued.

No right acquired over reserved forest, except as here provided.

23. Notwithstanding anything contained in section twenty-two, no right continued under section fourteen, clause (c), shall be alienated by way of grant, sale, lease, mortgage, or otherwise, without the sanction of the Local Government; provided that when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

Rights not to be alienated without sanction.

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section thirteen.

24. The forest-officer may, from time to time, with the previous sanction of the Local Government or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest; provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists, or has been provided or constructed by the forest-officer in lieu thereof.

Power to stop ways and water-courses in reserved forests.

Acts prohibited in such forests.

25. Any person who—

- (a) makes any fresh clearing prohibited by section five, or
- (b) sets fire to a reserved forest, or kindles any fire in such manner as to endanger the same ;
- or who, in a reserved forest,
- (c) kindles, keeps, or carries any fire except at such seasons as the forest-officer may from time to time notify in this behalf ;
- (d) trespasses or pastures cattle, or permits cattle to trespass ;
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber ;
- (f) fells, girdles, lops, taps, or burns any tree, or strips-off the bark or leaves from, or otherwise damages, the same ;
- (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce ;
- (h) clears or breaks up any land for cultivation or any other purpose ; or,
- (i) in contravention of any rules which the Local Government may from time to time prescribe, kills or catches elephants, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this section shall be deemed to prohibit (a) any act done by permission in writing of the forest-officer, or under any rule made by the Local Government ; or (b) the exercise of any right continued under section fourteen, clause (c), or created by grant or contract in writing made by or on behalf of Government under section twenty-two.

Whenever fire is caused wilfully or by gross negligence in a reserved forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof, the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

26. The Local Government may, with the previous sanction of the

Power to declare forest no longer reserved.

Governor-General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

From the date so fixed, such forest or portion shall cease to be reserved ; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III.

OF VILLAGE-FORESTS.

27. The Local Government may, from time to time, assign to any

Formation of village forests.

village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

The Local Government may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce, or pasture, and their duties for the protection and improvement of such forest.

All provisions of this Act relating to reserved forests shall (so far as they are consistent with the rules so made) apply to village-forests.

CHAPTER IV.

OF PROTECTED FORESTS.

28. The Local Government may, from time to time, by notification in the local official Gazette, declare the provisions of this chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

The forest-land and waste-lands comprised in any such notification shall be called a "protected forest"

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been enquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient.

Every such record shall be presumed to be correct until the contrary is proved :

Provided that, if in the case of any forest-land or waste-land, the Local Government thinks that such enquiry and record are necessary, but that they will occupy such length of time as that the rights of Government will in the meantime be endangered, the Local Government may (pending such enquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

29. The Local Government may from time to time, by notification in the local official Gazette,—

(a) declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification ;

(b) declare that a portion of such forest be closed for such term not exceeding twenty years as the Local Government thinks fit, and that the rights of private persons (if any) over such portion shall be suspended during such term : provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed ;

(c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing forest-produce, &c.,

process, or removal, of any forest-produce, in any such forest, and the and breaking-up or clearing of land. building, for cultivation, for purpose, any land in any such forest; and

(d) alter or cancel such declaration or prohibition.

30. The Collector or Deputy Commissioner of the district shall Publication of translation of such notification in neighbourhood. cause a translation into the language of the district, of every notification issued under section twenty-nine, to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Power to make rules for protected forests.

31. The Local Government may from time to time make rules to regulate the following matters:—

(a) the cutting, sawing, conversion, and removal of trees and timber, and the collection, manufacture, and removal of forest-produce, from protected forests;

(b) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber, or other forest-produce for their own use, and the production and return of such licenses by such persons;

(c) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons;

(d) the payments (if any) to be made by the persons mentioned in clauses (b) and (c) of this section, for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(e) the other payments (if any) to be made by them in respect of such trees, timber, and produce, and the places where such payments shall be made;

(f) the examination of forest-produce passing out of such forests;

(g) the clearing and breaking-up of land for cultivation or other purposes in such forests;

(h) the protection from fire of timber lying in such forests and of trees reserved under section twenty-nine;

(i) the cutting of grass and pasturing of cattle in such forests;

(j) killing or catching elephants, hunting, shooting, fishing, poisoning water, and setting traps or snares in such forests;

(k) the protection and management of any portion of a forest closed under section twenty-nine;

(l) the exercise of rights referred to in section twenty-eight.

Penalties for acts in contravention of notification under section 29.

32. Any person who commits any of the following offences:—

(a) fells, girdles, lops, taps, or burns any tree reserved under section twenty-nine, or strips-off the bark or leaves from, or otherwise damages, any such tree;

(b) contrary to any prohibition under section twenty-nine, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce;

(c) contrary to any prohibition under section twenty-nine, breaks up or clears for cultivation or any other purpose any land in any protected forest;

(d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section twenty-nine, whether standing, fallen, or felled, or to any closed portion of such forest;

(e) leaves burning any fire kindled by him in the vicinity of any such trees or closed portion;

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(g) permits cattle to damage any such tree;

(h) infringes any rule made under section thirty-one,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

33. Nothing in this chapter shall be deemed to prohibit any act

Nothing in this chapter done with the permission in writing of the forest-officer, or in accordance with rules made under section thirty-one, or (except as regards any portion of a forest closed under section twenty-nine) in the exercise of any right recorded under section twenty-eight.

CHAPTER V.

FORESTS UNDER CONSERVANCY-ADMINISTRATION WHEN THIS ACT COMES INTO FORCE.

34. Within twelve months from the date on which this Act comes

into force in the territories administered by any Local Government, such Government shall, after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of forest-conservancy, determine which of such lands (if any) can, according to justice, equity, and good conscience, be classed as reserved forests or protected forests under this Act, and declare, by notification in the local official Gazette, any lands so classed to be reserved or protected forests, as the case may be:

Provided that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration, been enquired into, settled, and recorded in a manner which the Local Government thinks sufficient:

Provided also that if any such rights have not on such date been so enquired into, settled, and recorded, the Local Government shall direct that the same shall be enquired into, settled, and recorded in the manner provided by this Act for reserved or protected forests, as the case may be; and until such enquiry, settlement, and record have been completed, no such declaration shall abridge or affect such rights.

CHAPTER VI.

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

35. The Local Government may, from time to time, by notification

Protection of forests for in the local official Gazette, regulate or prohibit
special purposes. in any forest or waste-land—

(a) the breaking-up or clearing of land for cultivation ;

(b) the pasturing of cattle ;

(c) the firing or clearing of the vegetation ; when such regulation or prohibition appears necessary for any of the following purposes :—

First.—For protection against storms, winds, rolling stones, floods, and avalanches ;

Second.—For the preservation of the soil on the ridges and slopes, and in the valleys, of hilly tracts, the prevention of landslips and of the formation of ravines and torrents, and the protection of land against erosion, or the deposit thereon of sand, stones, or gravel ;

Third.—For the maintenance of a water-supply in springs, rivers, and tanks ;

Fourth.—For the protection of roads, bridges, railways, and other lines of communication ;

Fifth.—For the preservation of the public health ;

and may alter or cancel such notification.

The Local Government may, for any such purpose, construct, at its own expense, in or upon any forest or waste-land, such work as it thinks fit :

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land, calling on him to shew cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, and until his objections (if any) and any evidence he may produce in support of the same have been heard by an officer duly appointed in that behalf, and have been considered by the Local Government.

36. In case of neglect of, or wilful disobedience to, any regula-

Power to assume manage- tion or prohibition under section thirty-five, or
ment of forests. if the purposes of any work to be constructed

under that section so require, the Local Government may, after notice in writing to the owner of such forest or land, and after considering his objections (if any), place the same under the control of a forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

The nett profits (if any) arising from the management of such forest or land shall be paid to the said proprietor.

37. In any case under this chapter in which the Local Govern-

Expropriation of forests ment considers that, in lieu of placing the
in certain cases. forest or land under the control of a forest-

officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner prescribed by the Land Acquisition Act, 1870.

The owner of any forest or land comprised in any notification under section thirty-five may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly.

38. The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof, may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector or Deputy Commissioner their desire —

(a) that such land be managed on their behalf by the forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon ; or

(b) that all or any of the provisions of this Act be applied to such land.

In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof, and as may be desired by the applicants.

Any such notification may be altered or cancelled by a like notification.

CHAPTER VII.

OF THE DUTY ON TIMBER.

39. The Local Government, with the previous sanction of the Governor-General in Council, may levy a duty on timber, in such manner, at such places, and at such rates, as it may from time to time prescribe by notification in the local official Gazette on all timber—

(a) which is produced in British India, and in respect of which the Government has any right ;

(b) which is brought from any place beyond the frontier of British India.

In every case in which such duty is directed to be levied *ad valorem*, the Local Government may, with the like sanction, from time to time fix, by like notification, the value on which such duty shall be assessed.

All duties on timber, which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

40. Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VIII.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE
IN TRANSIT.

41. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may from time to time make rules to regulate the transit of all timber and other forest-produce.

Power to make rules to regulate transit of forest-produce.

Such rules may (among other matters)—

(a) prescribe the routes by which alone timber and other forest-produce may be imported, exported, or moved into, from, or within British India ;

(b) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass ;

(c) provide for the issue, production, and return of such passes and for the payment of fees therefor ;

(d) provide for the stoppage, reporting, examination, and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty, or charge due thereon, or to which it is desirable, for the purposes of this Act, to affix a mark ;

(e) provide for the establishment and regulation of depôts to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it ; and the conditions under which such timber or other produce shall be brought to, stored at, and removed from, such depôt ;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches, and leaves into any such river, or any act which may cause such river to be closed or obstructed ;

(g) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same ;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits; the converting, cutting, burning, concealing, or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking-hammers or other implements used for marking timber ;

(i) regulate the use of property-marks for timber, and the registration of such marks ; prescribe the time for which such registration shall hold good ; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

42. The Local Government may by such rules prescribe as penalty for breach of ties for the infringement thereof imprisonment rules made under section 41. for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

43. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a dépôt established under a rule made under section forty-one, or while detained elsewhere for the purposes of this Act; and no forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously, or fraudulently.

44. In case of any accident or emergency involving danger to any property at any such dépôt, every person employed at such dépôt, whether by the Government or by any private person, shall render assistance to any forest-officer or police-officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER IX.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

45. All timber found adrift, beached, stranded, or sunk ;

all wood or timber bearing marks which have not been registered under section forty-one, or on which the marks have been obliterated, altered, or defaced by fire or otherwise, and,

in such areas as the Local Government directs, all unmarked wood and timber,

shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this chapter.

Such timber may be collected by any forest-officer or other person entitled to collect the same by virtue of any rule made under section fifty-one, and may be brought to such depôts as the forest-officer may from time to time notify as depôts for the reception of drift-timber.

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

46. Public notice shall from time to time be given by the forest-officer, of timber collected under section forty-five. Such notice shall contain a description of

the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47. When any such statement is presented as aforesaid, the forest-officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil, Criminal, or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section forty-six, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section forty-seven, the ownership of such timber shall vest in the Government, or when such timber has been delivered to another person under section forty-seven, in such other person, free from all encumbrances.

49. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section forty-five, and no forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously, or fraudulently.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section fifty-one.

51. The Local Government may from time to time make rules to regulate the following matters (namely) :—

(a) the salving, collection, and disposal of all timber mentioned in section forty-five;

(b) the use and registration of boats used in salving and collecting timber;

(c) the amounts to be paid for salving, collecting, moving, storing, and disposing of such timber ;

(d) the use and registration of hammers and other instruments to be used for marking such timber.

The Local Government may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER X.

PENALTIES AND PROCEDURE.

52. When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts, and cattle used in committing any such offence, may be seized by any forest-officer or police-officer.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Upon the receipt of any such report the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

54. All timber or forest-produce which is not the property of Government, and in respect of which a forest-offence has been committed, and all tools, boats, carts, and cattle used in committing any forest-offence, shall be liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

55. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken charge of by a forest-officer, and in any other case may be disposed of in such manner as the Court may direct.

56. When the offender is not known, or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the forest-officer, or to be made over to the person whom he deems to be entitled to the same :

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section fifty-two and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

58. The officer who made the seizure under section fifty-two or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section fifty-four, fifty-five, or fifty-six, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

59. When an order for the confiscation of any property has been passed under section fifty-four or fifty-six, as the case may be, and the period limited by section fifty-eight for an appeal from such order has elapsed and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section fifty-two.

61. Any forest-officer or police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code,—

(a) knowingly counterfeits upon any timber or standing tree a mark used by forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person ; or

(b) alters, defaces, or obliterates any such mark placed on a tree or on timber by or under the authority of a forest-officer ; or

(c) alters, moves, destroys, or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

63. Any forest-officer or police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case.

Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV. of this Act, unless such act has been prohibited under section twenty-nine, clause (c).

64. Every forest-officer and police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

65. The Magistrate of the District and any Magistrate of the first class specially empowered in this behalf by the Local Government may try summarily, under the Code of Criminal Procedure, any forest-offence punishable only with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

66. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act: Provided that no person shall be punished twice for the same offence.

67. The Local Government may, from time to time, by notification in the local official Gazette, empower any forest-officer by name, or as holding an office, to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence other than an offence under section sixty-one or section sixty-two, a sum of money by way of compensation for any damage which may have been committed, and to release any property which has been seized as liable to confiscation on payment of the value thereof as estimated by such officer.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken under this Act against such person or property; but nothing herein contained shall exempt such person from prosecution on the same facts under any other law for the time being in force.

68. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER XI.

CATTLE-TRESPASS.

69. Cattle trespassing in a reserved forest, or in any portion of a protected forest which has been lawfully closed to grazing, shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any forest-officer or police-officer.

70. The Local Government may from time to time, by notification in the local official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section sixty-nine of this Act, such fines as it thinks fit, but not exceeding the following, that is to say :—

For each elephant	...	...	...	ten rupees.
For each buffalo or camel	...	...	...	two "
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer	...	...	...	one rupee.
For each calf, ass, pig, ram, ewe, sheep, lamb, goat, or kid	...	...	...	eight annas.

CHAPTER XII.

OF FOREST-OFFICERS.

71. The Local Government may invest any forest-officer by name, or as holding an office, with the following powers, that is to say :—

- (a) power to enter upon any land, and to survey, demarcate, and make a map of the same ;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents ;
- (c) power to issue a search-warrant under the Code of Criminal Procedure ;
- (d) power to hold an enquiry into forest-offences, and, in the course of such enquiry, to receive and record evidence.

Any evidence recorded under clause (d) of this section shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

72. All forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

73. No suit shall lie against any public servant for anything done by him in good faith under this Act.

74. Except with the permission in writing of the Local Government, no forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or Foreign territory.

CHAPTER XIII.

SUBSIDIARY RULES.

Additional powers to make rules. **75.** The Local Government may from time to time make rules—

(a) to prescribe and limit the powers and duties of any forest-officer under this Act;

(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;

(c) for the preservation, reproduction, and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(d) generally to carry out the provisions of this Act.

76. Any person breaking any rule under this Act, for the breach of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

77. All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, so far as they are consistent with this Act, have the force of law:

Provided that no rule made under section twenty-seven, thirty-one, or forty-one, shall be so published without the previous sanction of the Governor-General in Council.

CHAPTER XIV.

MISCELLANEOUS.

78. Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest forest-officer or police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any forest-officer or police-officer demanding his aid

(a) in extinguishing any fire occurring in such forest;

(b) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(c) in preventing the commission in such forest of any forest-offence; and

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

79. If the Government and any person be jointly interested in any

Management of forests the joint property of Government and other persons.

forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may from time to time either—

(a) undertake the management of such forest, waste-land, or produce, accounting to such person for his interest in the same; or

(b) issue such regulations for the management of the forest, waste-land, or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

When the Local Government undertakes, under clause (a) of this section, the management of any forest, waste-land, or produce, it may from time to time, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II. and IV. of this Act shall apply to such forest, waste-land, or produce, and thereupon such provisions shall apply accordingly.

80. If any person be entitled to a share in the produce of any

Failure to perform service for which a share in produce of Government forest is enjoyed.

forest which is the property of Government, or over which the Government has proprietary rights, or to any part of the forest-produce of which the Government is entitled, upon the

condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Local Government that such service is no longer so performed: Provided that no such share shall be confiscated until the person entitled thereto, and the evidence (if any) which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

81. All money payable to the Government under this Act, or

Recovery of money due to Government.

under any rule made under this Act, or on account of the price of any forest-produce, or of

expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

82. When any such money is payable for or in respect of any forest-

Lien on forest-produce for such money.

produce, the amount thereof shall be deemed to be a first charge on such produce, and such

produce may be taken possession of by a forest-officer until such amount has been paid.

If such amount is not paid when due, the forest-officer may sell

Power to sell such produce.

such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

83. Whenever it appears to the Local Government that any land

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section four.

SCHEDULE.

(See section 1.)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII. of 1865	An Act to give effect to Rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII. of 1869	An Act to give validity to certain rules relating to forests in British Burma	The whole.
Act XIII. of 1873 ...	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX. of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII. of 1865 and VII. of 1869.

ACT NO. VIII. OF 1878.

THE SEA CUSTOMS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1878.

An Act to consolidate and amend the law relating to the levy of Sea Customs-duties.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties; It is enacted as follows:—

Preamble.

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES, AND BOARDING AND LANDING-STATIONS.

Power to appoint Ports, Wharves, and Custom-houses. 11. The Local Government may from time to time, by notification in the official Gazette,

- (a) declare the places within the territories administered by it which alone shall be Ports for the shipment and landing of goods;
- (b) declare the limits of such Ports;
- (c) appoint proper places therein to be Wharves for the landing and shipping of goods, or of particular classes of goods;
- (d) declare the limits of any such Wharf;
- (e) alter the name of any such Port or Wharf; and
- (f) declare what shall, for the purposes of this Act, be deemed to be a Custom-house, and the limits thereof.

17. The Chief Customs-Authority may from time to time appoint Stations for Customs- officers to board and land. in or near any Customs-port, stations, or limits at or within which vessels arriving at, or departing from, such Port, shall bring-to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been made under the Indian Ports Act, 1875, direct at what particular place in any such Port vessels, not brought into Port by pilots, shall anchor or moor.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

Prohibitions. 18. No goods specified in the following clauses shall be brought, whether by land or sea, into British India:—

- (a) any book printed in infringement of any law in force in British India on the subject of copyright, when the proprietor of such copyright, or his agent, has given to the Chief Customs-Authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire:

(b) counterfeit coin: or coin which purports to be Queen's coin of India, or to be coin made under the Native Coinage Act, 1876, but which is not of the established standard in weight or fineness:

(c) any obscene book, pamphlet, paper, drawing, painting, representation, figure, or article:

(d) articles bearing any names, brands, or marks being, or purporting to be, the names, brands, or marks of manufacturers resident in the United Kingdom or British India, and not made by such manufacturers.

19. The Governor-General in Council may, from time to time, by

Power to prohibit or restrict importation or exportation of goods.

notification in the *Gazette of India*, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or

out of British India or any specified part of British India.

CHAPTER VI.

DRAWBACK.

42. When any goods, capable of being easily identified, which

Drawback allowable on re-export.

have been imported by sea into any Customs-port from any Foreign Port, and upon which

duties of Customs have been paid on importation, are re-exported by sea from such Customs-port to any Foreign Port, or as provisions or stores for use on board a ship proceeding to a Foreign Port, seven-eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback:

Provided that, in every such case, the goods be identified to the

Conditions for grant of drawback.

satisfaction of the Customs-collector at such Customs-port, and that the re-export be made

within two years from the date of importation, as shown by the records of the Custom-house, or within such extended term as the Chief Customs-Authority, on sufficient cause being shown, in any case determines.

43. When any goods, having been charged with import-duty at

Drawback on goods exported to Customs-port and thence to Foreign Port.

one Customs-port, and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if

they had been so re-exported from the former Port:

Provided that, in every such case, the goods be identified to the

Proviso.

satisfaction of the officer in charge of the Custom-house at the Port of final exportation, and

that such final exportation be made within three years from the date on which they were first imported into British India.

44. A drawback of the whole of the Customs-duties shall be allowed

Drawback of duties on wine and spirit allowed for officers of Navy.

on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless such wine and spirit have been warehoused without

payment of duty on the first entry thereof.

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively; that is to say—

			<i>Gallons.</i>
For every Admiral	...	...	1,260
Vice-Admiral	...	...	1,050
Rear-Admiral	...	...	840
Captain of 1st and 2nd rate	...		630
Captain of 3rd, 4th, and 5th rate			420
Captain of an inferior rate	...		210
Lieutenant or other Command- ing Officer, Marine-officer, Master, Purser, or Surgeon			105

45. Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping-bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves, as well as the place and date of the last supply for which drawback was allowed.

Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the Port of shipment, to be shipped under their care; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

46. The Customs-collector may permit the transfer of any such wine or spirit from one Naval officer to another Naval officer on board of the same, or of any other such vessel, as part of his authorized quantity;

or may permit the transshipment of any such wine or spirit from one vessel to another for the use of the same Naval officer;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

47. Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped, or re-landed and warehoused, free of duty;

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the

Provisions and stores for Her Majesty's Navy.

officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

48. The provisions of sections 44, 45, 46, and 47 as to officers of Indian Marine and Her Majesty's Navy apply also to officers of Marine-survey. Her Majesty's Indian Marine and Marine-survey on board of any of the ships of such Marine or Survey proceeding to any Port out of India, and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey.

When no drawback allowed. **50.** Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

(a) upon goods not included in the export-manifest, or

(b) where the goods to be exported are of less value than the amount of drawback claimed, or

(c) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs-collector thinks fit to reject it, or

(d) on salt, salted fish, or opium.

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessel inwards.

53. The Local Government may, by notification in the local official Gazette, fix a place in any river or Port, beyond which no vessel arriving shall pass until a manifest has been delivered to the Pilot, officer of Customs, or other person duly authorized to receive the same.

If, in any river or port wherein a place has been fixed by the Local Government under this section, the Master of any vessel arriving remains outside or below the place so fixed, such Master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the Pilot, officer of Customs, or other person authorized to receive the same.

54. If any vessel arrives at any Customs-port in which a place has not been so fixed, the Master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the Port, deliver a manifest to the Pilot, officer of Customs, or other person authorized to receive the same.

55. Every manifest shall be signed by the Master, shall specify all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped, or taken on to another Port, and all ships' stores intended for consumption in Port or on the homeward voyage, and shall contain such further particulars, and be made out in such form, as the Chief Customs-Authority may from time to time direct.

The Customs-collector shall permit the Master to amend any ob-
 Amendment of errors in manifest. vious error in the manifest, or to supply any
 results from accident or inadvertence, by furnishing an amended or sup-
 plementary manifest,

and may, if he thinks fit, levy thereon such fee as the Chief Customs-Authority from time to time directs.

Except as herein provided, no import-manifest shall be amended.

56. The person receiving a manifest under section 53 or 54 shall
 Duty of person receiving manifest. countersign the same and enter thereon such
 particulars as the Chief Customs-Authority from
 time to time directs in this behalf.

57. No vessel arriving in any Customs-port shall be allowed to break
 Bulk not to be broken until manifest, &c., delivered, and vessel entered inwards. bulk until a manifest has been delivered as
 hereinbefore provided; nor until a copy of such
 manifest, together with an application for entry
 of such vessel inwards, has been presented by
 the Master to the Customs-collector, and an order has been given there-
 on for such entry.

58 The Master shall, if required so to do by the Customs-collector
 Master, if required, to deliver bill-of lading, &c., to Customs-collector. at the time of presenting such application,
 deliver to the Customs-collector the bill-of-lad-
 ing or a copy thereof for every part of the cargo
 laden on board, and any port-clearance, cockett, or other paper granted
 in respect of such vessel at the place from which she is stated to have
 come, and shall answer all such questions relating to the vessel,
 cargo, crew, and voyage as are put to him by
 and answer questions. such officer.

The Customs-collector may, if any requisition or question made or
 put by him under this section is not complied with or answered,
 refuse to grant such application.

59. Notwithstanding anything contained in section 57, the Cus-
 Special pass for breaking bulk. toms-collector may grant, prior to receipt of
 the manifest, and to the entry inwards of the
 vessel, a special pass permitting bulk to be broken.

The granting of such pass shall be subject to such rules as may
 from time to time be made by the Chief Customs-Authority.

Entry outwards, Port-clearance, and Departure of Vessels.

62. No vessel, whether laden or in ballast, shall depart from any
 No vessel to depart without port-clearance. Customs-port until a port-clearance has been
 granted by the Customs-collector or other offi-
 cer duly authorized to grant the same.

No pilot to take charge of vessel proceeding to sea without production of port-clearance.

And no Pilot shall take charge of any
 vessel proceeding to sea, unless the Master of
 such vessel produces a port-clearance.

63. Every application for port-clearance shall be made by the
 Application for port-clearance. Master at least twenty-four hours before the
 intended departure of the vessel.

Master on applying for port-clearance to deliver documents and answer questions.

The Master shall, at the time of applying for port-clearance—

(a) deliver to the Customs-collector a manifest in duplicate in such form as may from time to time be prescribed by the Chief Customs-Authority, signed by such Master, specifying all goods to be exported in the vessel, and showing separately all goods and stores entered in the import-manifest, and not landed or consumed on board or transhipped :

(b) deliver to the Customs-collector, such shipping-bills or other documents as such Customs-collector, acting under the general instructions of such Chief Customs-Authority, requires ; and

(c) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

The provisions of section 55 relating to the amendment of import-manifests shall, *mutatis mutandis*, apply also to export-manifests delivered under this section.

Power to refuse port-clearance.

64. The Customs-collector may refuse port-clearance to any vessel until

(a) the provisions of section 63 are complied with ;

(b) all port-dues and other charges and penalties due by such vessel, or by the owner or Master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by a deposit at such rate as such Customs-collector directs ;

(c) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No. 17, and furnishes security for the discharge of the same ;

(d) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import-cargo in respect of such goods.

A ship's agent delivering a declaration under clause (c) of this section shall be liable to all penalties which might be imposed on the Master under section 167, No. 17, and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration.

CHAPTER VIII.

GENERAL PROVISIONS AFFECTING VESSELS IN PORT.

68. Whenever an officer of Customs is so deputed on board of any vessel, the Master of such vessel shall be bound to receive on board such officer and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board.

69. Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold, and mark any goods before landing, and lock up, seal, mark, or otherwise secure any goods on

Officers of Customs to have free access to every part of ship, and may seal and secure goods.

board of such vessel.

If any box, place, or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search.

On production of such order, the officer bearing the same may require that any such box, place, or closed receptacle be opened in his presence; and, if it be not opened upon his requisition, he may break open the same.

70. Unless with the written permission of the Customs-collector

Goods not to be shipped, discharged, or water-borne except in presence of officer.

or in accordance with a general permission granted under section 74, no goods, other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any Customs-port, except in the presence of an officer of Customs.

72. Except with the written permission of the Customs-collector,

Goods not to be landed, &c., on Sundays or holidays, without permission, nor except within fixed hours.

no goods, other than passengers' baggage, shall in any Customs-port be discharged from any vessel, or be shipped or water-borne to be shipped—

(a) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs-Authority;

(b) on any day, except between such hours as such authority from time to time appoints by notification in the official Gazette.

73. No goods shall in any Customs-port be landed at any place

Goods not to be shipped, &c., except at wharves.

other than a wharf or other place duly appointed for that purpose, and unless with the written permission of the Customs-collector, or when a general permission has been granted under section 74, no goods shall in any Customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose.

75. The Chief Customs-Authority may, from time to time, make

Power to make rules regarding baggage and mails.

rules for the landing and shipping of passengers' baggage and the passing of the same through the Custom-house; and for the landing, shipping, and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger-vessels.

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the Local Government from

Landing fees.

time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the Custom-house.

76. When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home-consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch, a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the Master of the vessel, or to an officer of the vessel appointed by him to receive it.

The officer of Customs who receives any boat-note of goods landed, and the officer of Customs, Master, or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same, and note thereon such particulars as the Chief Customs-Authority may from time to time direct.

The Local Government may from time to time, by notification in the local official Gazette, suspend the operation of this section in any Customs-port or part thereof.

77. All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

78. Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

79. The Local Government may declare with regard to any Customs-port, by notification in the local official Gazette, that after a date therein specified, no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandize within the limits of such Port.

In any Port with regard to which such notification has been issued, the Chief Officer of Customs, or other officer whom the Local Government appoints in this behalf, may, subject to such rules, and on payment of such fees as the Local Government from time to time prescribes by notification in the local official Gazette, issue licenses for, and register, cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

82. Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home-consumption or warehousing by delivering to the Customs-collector a bill-of-entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the Chief Customs-Authority.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home-consumption, or warehouse them, subject to the provisions herein-after contained.

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

90. When any dutiable goods have been entered for warehousing, and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act.

91. Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs-Authority.

92. When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself in a penalty of twice the amount of duty assessed under section 87 on such goods.

(a) to observe all rules prescribed by this Act in respect of such goods;

(b) to pay, on demand, all duties, rent, and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate, not exceeding six per cent. per annum, as is for the time being fixed by the Chief Customs-Authority; and

(c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-Authority, and shall relate to the cargo or portion of the cargo of one vessel only.

93. When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited.

A pass shall be sent with the goods specifying the name of the importing vessel and of the bondor, the marks, numbers, and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited.

94. On receipt of the goods, the pass shall be examined by the warehouse-keeper, and shall be returned to the Customs-collector.

No package, butt, cask, or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission.

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed.

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper for the orders of the Customs-collector, and the goods shall either be returned to the Custom-house in charge of an officer of Customs, or kept in deposit pending such orders, as the warehouse-keeper deems most convenient.

If the quantity or value of any goods has been erroneously stated in the bill-of-entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently.

95. Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks, or hogsheads in which they have been imported.

96. Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods.

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

The Local Government may, by notification in the local official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption.

Rules relating to Goods in a Warehouse.

97. The Customs-collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

98. The Customs-collector may at any time, by order in writing,

Power to cause packages direct that any goods or packages lodged in any
lodged in warehouse to be warehouse shall be opened, weighed, or other-
opened and examined. wise examined; and after any goods have been
so opened or examined, may cause the same to be sealed or marked in
such manner as he thinks fit.

When any goods have been so sealed and marked after examina-
tion, they shall not be again opened without the permission of the
Customs-collector; and when any such goods have been opened with
such permission, the packages shall, if he thinks fit, be again sealed or
marked as before.

99. Any owner of goods lodged in a warehouse shall, at any time

Access of owners to ware- within the hours of business, have access to his
housed goods. goods in presence of an officer of Customs, and
an officer of Customs shall, upon application for the purpose being made
in writing to the Customs-collector, be deputed to accompany such
owner.

When an officer of Customs is specially employed to accompany
such owner, a sum sufficient to meet the expense thereby incurred shall
if the Customs-collector so require be paid by such owner to thecus-
toms-collector, and such sum shall, if the Customs-collector so direct, be
paid in advance.

100. With the sanction of the Customs-collector, and after such

Owner's power to deal notice given, and under such rules and condi-
with warehoused goods. tions as the Chief Customs-Authority from time
to time prescribes, any owner of goods may, either before or after ware-
housing the same,—

(a) sort, separate, pack, and repack the goods, and make such altera-
tions therein as may be necessary for the preservation, sale, shipment, or
disposal thereof (such goods to be repacked in the packages in which
they were imported, or in such other packages as the Customs-collector
permits);

(b) fill up any casks of wine, spirit, or beer from any casks of the,
same secured in the same warehouse;

(c) mix any wines or spirit of the same sort secured in the same
warehouse, erasing from the cask all import-brands, unless the whole of
the wine or spirit so mixed be of the same brand:

(d) bottle-off wine or spirit from any casks:

(e) take such samples of goods as may be allowed by the Customs-
collector with or without entry for home-consumption, and with or with-
out payment of duty, except such as may eventually become payable,
on a deficiency of the original quantity.

After any such goods have been so separated and repacked in pro-
per or approved packages, the Customs-collector may, at the request of
the owner of such goods, cause or permit any refuse, damaged, or sur-
plus goods remaining after such separation or repacking (or, at the like
request, any goods which may not be worth the duty) to be destroyed
and may remit the duty payable thereon.

101. If goods be lodged in a public warehouse, the owner shall pay

Payment of rent and monthly, on receiving a bill or written demand
warehouse-dues. for the same from the Customs-collector or

other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the Chief Customs-Authority or such officer of Customs as such Authority from time to time appoints in this behalf may fix.

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse.

If any bill for rent or warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Customs-collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered, and shall then pay over the surplus (if any) to the owner of the goods :

Provided that the application for such surplus be made within one year from the date of the sale of the goods, or that sufficient cause be shown for not making it within such period.

102. No warehoused goods shall be taken out of any warehouse,

Goods not to be taken out of warehouse, except as provided by this Act.

except on clearance for home-consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

103. Any goods warehoused may be left in the warehouse in which

Period for which goods may remain warehoused under bond.

they are deposited, or in any warehouse to which they may, in manner hereinafter provided, be removed, till the expiry of three years after the

date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home-consumption or shipment in manner hereinafter provided :

Provided that when the license for any private warehouse is can-

Goods in private warehouse on cancellation of license.

celled, and the Customs-collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall, in

manner hereinafter provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse, or clear them for home-consumption or shipment.

Of the Removal of Goods from one Warehouse to another.

104. Any owner of goods warehoused under this Act may, at any

Power to remove goods from one warehouse to another in same Port.

time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the

Chief Customs-Officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same Port.

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the Chief Customs-Authority from time to time prescribes.

105. Any owner of goods warehoused at any warehousing Port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing Port.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-Officer, stating the particulars of the goods to be removed, and the name of the Port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the Chief Customs-Authority from time to time prescribes.

106. When permission is granted for the removal of any goods from one warehousing Port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the Port of removal to the proper officer of the Port of destination ;

and the person requiring the removal shall, before such removal, enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the Port of destination within such time as the Chief Customs-Authority directs.

Such bond may be taken by the proper officer, either at the Port of removal or at the Port of destination, as best suits the convenience of the owner.

If such bond is taken at the Port of destination, a certificate thereof, signed by the proper officer of such Port, shall, at the time of the removal of such goods, be produced to the proper officer at the Port of removal ; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the Port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer ; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

107. The Chief Customs-Authority may permit any person desirous of removing warehoused good to enter into a general bond, with such sureties, in such amount, and under such conditions, as the Chief Customs-Authority approves, for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different Port, and for the due arrival and re-warehousing of such goods at the Port of destination within such time as such Authority directs.

108. Upon the arrival of warehoused goods at the Port of destination they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods.

109. Every bond executed under section 92 in respect of any goods

Bond under section 92 to continue in force notwithstanding removal.

shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing Port.

Clearance for Home-consumption or Shipment.

110. Any owner of goods warehoused may, at any time within

Clearance of bonded goods for home-consumption.

three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for home-consumption by paying (a) the duty assessed on such goods under section 87, or where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (b) all rent, penalties, interest, and other charges payable to the Customs-collector in respect of such goods.

111. Any owner of goods warehoused may, at any time within

Clearance of same for shipment to Foreign Port.

three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a Foreign Port on payment of all rent, penalties, interest, and other charges payable as aforesaid, and without payment of import-duty on the same:

Provided that the Governor-General in Council may prohibit the shipment for exportation to any specified Foreign Port of warehoused goods in respect of which payment of drawback or transhipment has been prohibited under section 49 or 134 respectively.

112. Provisions and stores warehoused at the time of importation

Clearance of same for shipment as provisions, &c., on vessels proceeding to Foreign Ports.

may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a Foreign Port.

113. Application to clear goods from any warehouse for home-

Form of application for clearance of goods.

consumption or for shipment shall be made in such form as the Chief Customs-Authority from time to time prescribes.

Such application shall ordinarily be made to the Customs-collector

Application when to be made.

at least twenty-four hours before it is intended so to clear such goods.

114. If any goods upon which duties are leviable *ad valorem* or on

Re-assessment of warehoused goods when damaged.

a tariff-valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home-consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing.

115. If after any goods entered for warehousing have been assessed

Re-assessment on alteration of duty or tariff-valuation.

under section 87, any alteration is made in the duty leviable upon such goods or in the tariff-valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with the second proviso to section 37.

116. If it appear at the time of clearing any wine, spirit, beer, or

Allowance in case of wine, spirit, beer, or salt. salt from any warehouse for house-consumption that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely) :—

(a) upon wine, spirit, and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time be prescribed in this behalf by the Local Government and notified in the official Gazette :

For any time not exceeding	6 months	2½ per cent.
exceeding 6 months and not exceeding 12	"	5 "
exceeding 12 months and not exceeding 18	"	7½ "
exceeding 18 months and not exceeding 2 years	"	10 "
exceeding 2 years and not exceeding 3	"	12 "

(b) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with Customs-duties :

(c) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the Local Government and notified in the local official Gazette.

117. When any wine, spirit, beer, or salt lodged in a warehouse is

Further special allowance. found to be deficient at the time of the delivery thereof, and such deficiency is proved to be due solely to ullage or wastage, the Chief Customs-Authority may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116.

Of the Forfeiture and Discharge of the Bond.

If goods are improperly removed from warehouses or allowed to remain beyond time fixed,

118. If any warehoused goods are removed from the warehouse in contravention of section 102; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse; or

if any goods in respect of which a bond has been executed under or lost or destroyed, section 92, and which have not been cleared for home-consumption or shipment, or removed, under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-collector; or

or taken as samples. if any such goods have been taken under section 100 as samples without payment of duty,

the Customs-collector may thereupon demand, and the owner of Collector may demand such goods shall forthwith pay, the full amount duty, &c. of duty chargeable on account of such goods, together with all rent, penalties, interest, and other charges payable to the Customs-collector on account of the same.

119. If any owner fails to pay any sum so demanded, the Customs-

Procedure on failure to pay duty, &c. collector may forthwith either proceed upon the bond executed under section 92, or cause such

portion, as he thinks fit, of the goods (if any) in the warehouse on account of which the amount is due, to be detained with a view to the recovery of the demand ;

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette.

The nett proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods : Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided, for any amount due thereon.

120. When any warehoused goods are taken out of any warehouse

the Customs-collector shall cause the fact to be noted on the back of the bond.

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping-bill under which they have been taken away if removed for exportation by sea, or of the bill-of-entry if removed for home-consumption, and the amount of duty paid (if any).

121. A register shall be kept of all bonds entered into for Customs-

duties on warehoused goods, and entry shall be made in such register of all particulars required

by section 120 to be specified.

When such register shows that the whole of the goods covered by

any bond have been cleared for home-consumption or shipment, or otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Customs-collector shall cancel such bond as discharged in full, and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

Miscellaneous.

122. If any goods in respect of which a bond has been executed

under section 92, and which have not been cleared for home-consumption, are lost or destroyed by unavoidable accident or delay, the Chief Customs-Authority may in its discretion remit the duties due thereon :

Provided that, if any such goods be so lost or destroyed in a private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction.

123. The warehouse-keeper in respect of goods lodged in a

public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be

responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight, or gauge reported by the Custom-house officer who has assessed such goods, allowance being made, if necessary, for ullage and wastage as provided in sections 116 and 117 :

Provided that no owner of goods shall be entitled to claim from Compensation for loss or the Customs-collector, or from any keeper of a public warehouse, compensation for any loss or injury. damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs.

124. Every public warehouse shall be under the lock and key of a Public warehouse to be warehouse-keeper appointed by the Chief Officer of Customs. locked. *

125. The Chief Customs-Authority, or such officer of Customs as Power to decide where goods may be deposited in public warehouse, and on what terms. such Authority from time to time appoints in this behalf, may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

126. The expenses of carriage, packing, and stowage of goods on Expenses of carriage, packing, &c., to be borne by owners. their reception into or removal from a public warehouse, shall, if paid by the Customs-collector or by the warehouse-keeper, be chargeable on the goods, and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

127. All the provisions of this Act, relating to private warehouses, Bengal Bonded Warehouse Association. shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

CHAPTER XII.

TRANSHIPMENT.

130. The powers conferred on the Customs-collector by section 128. Subsidiary rules as to transhipment. shall be exercised, and the transhipment shall be performed, subject to such rules as may from time to time be made by the Local Government.

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the Local Government may in each case appoint in this behalf.

134. The Governor-General in Council may, from time time, by Power to prohibit transhipment. notification in the *Gazette of India*, prohibit, at any specified Port, or at all Ports, the transhipment of any specified class of goods, generally or when destined for any specified Ports, or prescribe any special mode of transhipping any specified class of goods.

CHAPTER XIII.

EXPORTATION OR SHIPMENT, AND RE-LANDING.

136. Except with the written permission of the Customs-collector, no goods to be shipped, no goods other than passengers' baggage, or &c., till entry outwards of vessel. ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a Customs-port until an order has been obtained under section 61 for entry outwards of such vessel.

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

137. Unless the Chief Customs-Authority shall, in the case of any Clearance for shipment. Customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette, no goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation, until—

(a) the owner has delivered to the Customs-collector, or other proper officer, a shipping-bill of such goods in duplicate, in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the Chief Customs-Authority;

(b) such owner has paid the duties (if any) payable on such goods; and

(c) such bill has been passed by the Customs-collector.

140. If any goods mentioned in a shipping-bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the Port, give information of such short-shipment or re-landing to the Customs-collector.

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid: Provided that no such refund shall be allowed unless information has been given as above required.

141. If, after having cleared from any Customs-port, any vessel, without having discharged her cargo, returns to such Port, or puts into any other Customs-port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the Master, apply to the Customs-collector in that behalf.

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transhipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-collector, or are transhipped under such custody.

All expenses attending such custody shall be borne by the owner.

CHAPTER XIV.

SPIRIT.

Miscellaneous.

154. No spirit shipped for exportation shall be re-landed without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

155. When by any law for the time being in force a special duty is imposed on spirit rendered unfit for human consumption, the Local Government may, from time to time, make rules for ascertaining and determining what spirit imported into British India shall be deemed to have been effectually and permanently so rendered unfit, or for causing such spirit to be so rendered, if necessary, by their own officers, and at the expense of the person importing the same, before the Customs-duties leviable thereon are levied.

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-officer shall decide what spirit is subject only to the said special duty, and such decision shall be final.

Decision where no rules, or their applicability disputed.

CHAPTER XV.

COASTING-TRADE.

156. Except as hereinafter provided, nothing in Chapters VII., IX., X., and sections 136, 139, and 141 to 143 inclusive, of this Act, shall apply to coasting-vessels or to goods imported or exported in such vessels.

Chapters VII., IX., X., and part of XIII. inapplicable to coasting-trade.

157. The Local Government may, from time to time, make rules consistent with the provisions of this chapter,

(a) extending any provision of the chapters and sections mentioned in section 156, with or without modification, to any coasting-vessels or to any goods imported or exported in such vessels ;

(b) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this chapter ;

(c) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a Foreign Port, or at a Customs-port, or at a place declared under section 12 to be a Port ; (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such vessel from a Foreign Port have been unladen ;

(d) prohibiting the conveyance of any specified class of goods generally, or to or between specified Ports in a coasting-vessel.

Power to regulate coast-trade.

158. Before any coasting-vessel departs from the Port of lading, or,

Coasting-vessels to deliver
manifest and obtain port-
clearance before leaving
Port of lading.

when there are more Ports of lading than one, the first Port of lading, the Master shall fill in, sign, and deliver to the Customs-collector a manifest in duplicate containing a true speci-

fication of all goods to be carried in such vessel, in such form, and accompanied by such shipping-bills or other documents, as may from time to time be prescribed by the Chief Customs-Authority.

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments; and such manifest shall be the port-clearance of the vessel, unless, under the general orders of the Chief Customs-Authority, a separate port-clearance be prescribed.

159. Within twenty-four hours after the arrival of any coasting-

Delivery of manifest, &c.,
on arrival.

vessel at any Customs-port, whether inter-
mediate or final, and before any goods are there

discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs-collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any Foreign Port between such Port of arrival and her last preceding Customs-port of departure, the Master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such port.

If the Customs-port of arrival be an intermediate Port, and a portion only of the cargo is to be discharged thereat, the Master shall likewise so deliver an extract from the manifest signed by him relating to such portion, and the Customs-collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it, except those relating to such portion.

If in any case the cargo actually on board any coasting-vessel on her arrival at any Customs-port does not, owing to short-shipment, re-landing, or other cause, correspond with the specification thereof in the manifest returned to the Master under the second clause of section 158, such Master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

The Customs-collector, when satisfied with the manifest and other documents, shall grant an order to break bulk.

160. Before any coasting-vessel departs from any Customs-port at

Departure from inter-
mediate Port.

which she has touched during her voyage, the
Master shall re-deliver the original manifest to

the Customs-collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such Port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

If the Customs-collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

161. The Customs-collector may, for sufficient reason, refuse port-

Power to require bond before port-clearance is granted. clearance to any coasting-vessel declared to be bound to, or about to touch at, any Customs-port, unless the owner or Master gives a bond,

with such security as the Customs-collector deems sufficient, for the production to the Customs-collector of a certificate from the proper officer of the Port to which such vessel is said to be bound, of her arrival at such Port within a reasonable time to be prescribed in each case by the Customs-collector.

162. When permission has been granted by the Customs-collector

Discharge of cargo. for the discharge of cargo from any coasting-vessel—

(a) if the vessel has not touched at any intermediate Foreign Port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner, without entry thereof at the Custom-house and clearance for home-consumption but, subject to such general check and control as the Chief Customs-Authority may from time to time by rules prescribe ;

(b) if the vessel has so touched at any such Port, or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII. of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX. of this Act relating to goods imported.

163. If any of the goods on board of any coasting-vessel be sub-

Goods on coasting-vessel, if excisable, not to be unladen without permission. ject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise.

164. Notwithstanding any thing hereinbefore contained, the Chief

Grant and revocation of general pass. Customs-Authority may authorize the Customs-collector to grant a general pass, on any conditions which such Authority thinks expedient, for the lading and clearance, and for the entry and unlading, of any coasting steam-vessel at any Ports of despatch or destination, or at any intermediate Ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such Ports only as may be specified therein.

Any such general pass may be revoked by order of the Chief Customs-Authority by whom the grant thereof was authorized, by notice in writing under the hand of such Authority, delivered to the Master or to the owner of such steam-vessel, or to any of the crew on board.

165. The Chief Customs-Authority may direct that the Master of

Rules respecting cargo-books to be kept by Masters of coasting-vessels. any coasting-vessel which is square-rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the Master, the vessel, the Port to which she belongs, and the Port to which on each voyage she is bound.

At every Port of lading such Master shall enter, or cause to be entered, in such book, the name of such Port, and an account of all

goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

At every Port of discharge of any such goods such Master shall enter, or cause to be entered, in such book, the respective days on which such goods or any of them are delivered out of such vessel.

The respective times of departure from every Port of lading, and of arrival at every Port of discharge, shall in like manner be duly entered.

Every such Master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-Authority may, in the case of any vessel the Master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159, and 160.

166. Any duly empowered officer of Customs may go on board of

Power to board and examine coasting-vessels.

any coasting-vessel in any Port or place in British India, and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

The Customs-collector may further require that any such document belonging to any coasting-vessel then in Port shall be brought to him for inspection.

CHAPTER XVI.

OFFENCES AND PENALTIES.

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with

Punishments for offences.
reference to such offences respectively :—

Offences.	Section of this Act to which offence has reference.	Penalties.
1.—Contravening any rule made under this Act.	General	Penalty not exceeding five hundred rupees.
2.—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or if any goods be brought into any bay, river, creek, or arm of the sea, for the purpose of being landed or shipped, at any Port or place which, at the date of such landing, shipment, attempt, or bringing, is not a Port for the landing and shipment of goods,	11	such goods shall be liable to confiscation.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>3.—If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act; or</p>	General	such person shall be liable to a penalty not exceeding one thousand rupees.
<p>if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under No. 2 of this section, while such vessel is within any bay, river, creek, or arm of the sea which is not a Port for the landing or shipment of goods,</p>	11	
<p>4.—If any vessel which has been within the limits of any Port in British India with cargo on board, be afterwards found in any port, bay, river, creek, or arm of the sea in British India, light or in ballast, and if the Master be unable to give a due account of the Customs-port where such vessel lawfully discharged her cargo,</p>	11	such vessel shall be liable to confiscation.
<p>5.—If any goods are put, without the authority of the proper officer of Customs, on board of any tug-steamers or pilot-vessel from any sea going vessel inward-bound; or if any goods are put, without such authority, out of any tug-steamers or pilot-vessel for the purpose of being put on board of any such vessel outward-bound; or if any goods on which drawback has been granted are put, without such authority, on board of any tug-steamers or pilot-vessel for the purpose of being re-landed,</p>	11	such goods shall be liable to confiscation, and the Master of every such tug-steamers or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.
<p>6.—If any vessel arriving at, or departing from, any Customs-port, fails, when so required under section 17, to bring to at any such station as has been appointed by the Chief Customs-Authority for the boarding or landing of an officer of Customs,</p>	17	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>7.—If any vessel arriving at any Customs-port, after having come to its proper place of mooring or unloading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1875, or other lawful authority, to some other place of mooring or unloading, or</p> <p>if any vessel not brought into Port by a Pilot be not anchored or moored in accordance with any direction of the Chief Customs-Authority under section 17.</p>	<p>...</p> <p>17</p>	<p>the Master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel, if not entered, shall not be allowed to enter until the penalty is paid.</p>
<p>8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV. of this Act, be imported into or exported from British India contrary to such prohibition or restriction; or</p> <p>if any attempt be made so to import or export any such goods; or</p> <p>if any such goods be found in any package produced to any officer of Customs as containing no such goods; or</p> <p>if any such goods, or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any Port in British India; or</p> <p>if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,</p>	<p>18 & 19</p>	<p>such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.</p>
<p>9.—If upon an application to pass any goods through the Custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner,</p>	<p>General</p>	<p>such person shall be liable to a penalty not exceeding one thousand rupees.</p>

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any Customs-port (not having been duly re-landed or discharged under the provisions of this Act),	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation; and the Master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees.
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47, or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs,	44 to 48	such wine, spirit, provisions or stores shall be liable to confiscation.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation.
13.—If, in any river or Port wherein a place has been fixed under section 53 by the Local Government, any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorized to receive the same,	53	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
14.—If the Master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	„	such Master shall be liable to a penalty not exceeding one thousand rupees.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence referred.	Penalties.
15.—If, after any vessel arriving has entered any Customs-port in which a place has not been fixed under section 53, the Master of such vessel wilfully omits, for the space of twenty-four hours after arrival, to deliver a manifest as required by this Act,	54	such Master shall be liable to a penalty not exceeding one thousand rupees.
16.—If any manifest delivered under section 53, 54, 60, 73, or 66, is not signed by the person delivering the same, and is not in the form so does not contain the particulars required by section 55 or 56, as the case may be, in so far as such manifest is applicable to the cargo, and voyage, or if any manifest so delivered does not contain a certificate in the best of which person in charge of all goods intended to be exported in such vessel,	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees.
17.—If any goods entered in the manifest of a vessel are not found on board of the vessel, or if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the collector in charge of the Customs-house,	55 & 64	the Master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if any be ascertainable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article.
18.—If any person required by this Act to receive a manifest from any Master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56,	53, 54, & 56	such person shall be liable to a penalty not exceeding five hundred rupees.
19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken,	57 & 59	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>20.—If any bill-of-lading or copy required under section 58 is false and the Master is unable to satisfy the Customs-collector that he was not aware of the fact; or if any such bill or copy has been altered with fraudulent intent; or</p> <p>if the goods mentioned in any such bill or copy have not been <i>bond fide</i> shipped as shewn therein; or</p> <p>if any such bill-of-lading or any bill-of-lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill-of-lading were shipped; or</p> <p>if any part of the cargo has been staved, destroyed, or thrown overboard; or if any package has been opened, and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector,</p>	58	the Master of the vessel shall be liable to a penalty not exceeding one thousand rupees.
<p>21.—If any Master of a vessel attempts to depart without a port-clearance,</p>	62	such Master shall be liable to a penalty not exceeding five hundred rupees.
<p>22.—If any vessel actually departs without a port-clearance,</p>	62	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
<p>23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the Master of such vessel does not produce a port-clearance,</p>	62	such pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees.
<p>24.—If any Master of a vessel refuses to receive on board an officer of Customs deputed under section 67,</p>	68	such Master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board; and the vessel, if not entered, shall not be allowed to enter until such penalty is paid.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
25.—If any Master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,	68	such Master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.
26.—If any Master of a vessel refuses to allow such vessel, or any box, place, or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search; or if an officer of Customs places any lock, mark, or seal upon any goods in a vessel, and such lock, mark, or seal is wilfully opened, altered, or broken, before due delivery of such goods; or if any such goods are secretly conveyed away; or if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,	69	the Master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees.
27.—If the Master of any vessel fail up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,	70	such Master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be re-landed for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation.
28.—If any Master of a vessel, in any case other than that provided for by No. 17 causes or suffers any goods to be discharged, shipped, or water-borne contrary to any of the provisions of section 70, 72, or 75,	70, 72, & 75	such Master shall be liable to a penalty not exceeding one thousand rupees; and all goods so discharged, shipped, or water-borne, shall be liable to confiscation.
29.—If, when a boat-note is required by section 76, any goods water-borne for the purpose of being landed from any vessel, and warehoused or parcelled for exportation, or being shipped for exportation, be found without such note; or	76	such goods shall be liable to confiscation; and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,		each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods.
30.—If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat-note, as required by section 76, or if any Master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition,	76	such person, Master, or officer shall be liable to a penalty not exceeding five hundred rupees.
31.—If any goods are, without permission, shipped or water-borne to be shipped, or are landed, except from a wharf or other place duly appointed for the purpose; or	73	such goods shall be liable to confiscation; and the person by whose authority the goods are shipped, landed, water-borne,
if any goods water-borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay; or	77	or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods.
if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs-collector; or		
if any goods are transhipped contrary to the provisions of section 78,	78	
32.—If, after the issue of a notification under section 79 with regard to any Port, any goods are found within the limits of such Port on board of any boat not duly licensed and registered.	79	such goods, unless they are covered by a special permit from the Customs-collector, shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees.
33.—If any Master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,	55 & 82	such Master shall be liable to a penalty not exceeding one thousand rupees.
34.—If any goods are found concealed in any place, box, or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the Custom-house,	General	such goods shall be liable to confiscation.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.
36.—If, after any goods have been landed and before they have been passed through the Custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation; or if the goods cannot be recovered, the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article.
37.—If it be found, when any goods are entered at, or brought to be passed through, a Custom-house, either for importation or exportation, that (a) the packages in which they are contained differ widely from the description given in the bill-of-entry or application for passing them; or (b) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters, or conditions according to which such goods are chargeable with duty, or are being imported or exported; or (c) the contents of such packages have been mis-stated in regard to sort, quality, quantity, or value; or (d) goods not stated in the bill-of-entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs, and such circumstance is not accounted for to the satisfaction of the Customs-collector,	86 & 137	such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
38.—If, when goods are passed by tale or by package, any omission or mis-description thereof tending to injure the revenue be discovered,	86 & 91	the person guilty of such omission or mis-description shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or mis-description, unless it be proved to the satisfaction of the officer in charge of the Custom-house that the variance was accidental.
39.—If, without entry duly made, any goods are taken or passed out of any Custom-house or wharf,	86	the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,	General	such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.
42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.
43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation.
44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or upon demand made by any such officer, refuses access to any such officer.	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his license forthwith cancelled.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
45.—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,	Chapter XI.	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees.
46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.
48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117,	123	the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector,	123	such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from, the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment,	Chapter XI.	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Chapter XI.	such excess, unless accounted for to the satisfaction of the officer in charge of the Custom-house, shall be charged with five times the ordinary duty thereon.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery,	Chapter XI.	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.
53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists, or is concerned therein,	Ditto	such person shall be liable to a penalty not exceeding one thousand rupees.
54.—If any person contravenes any rule regarding the process of transshipment made by the Local Government, or	130	such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation.
any prohibition or order relating to transshipment notified by the Governor (General in Council, or transships goods not allowed to be transhipped.	134	
55.—If any goods be taken on board of any vessel at any Customs-port in contravention of section 136,	136	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
56.—If any goods not specified in a duly passed shipping-bill are taken on board of any vessel, contrary to the provisions of section 137,	137	the Master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods.
57.—If any goods specified in the manifest of any vessel, or in any shipping-bill, are not duly shipped before the departure of such vessel, or are re-landed; and notice of such short shipment or re-landing be not given as required by section 140,	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation.
58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142, or 143, at any place other than that for which they have been cleared,	141	the Master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-collector, be liable to a penalty not exceeding three times the value of such goods so landed.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142,	141	the Master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector.
60.—If any person, without a special pass from an officer of excise at the place of exportation, relands or attempts to reland any spirit shipped for exportation,	154	such person shall be liable to a penalty not exceeding five hundred rupees.
61.—If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees; and all such spirit shall be liable to confiscation.
62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting-vessel; or if any such rules be otherwise infringed,	157	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
63.—If, contrary to any such rules, any coasting-vessel touches at any Foreign Port, or deviates from her voyage, unless forced by unavoidable circumstances; or if the Master of any such vessel which has touched at a Foreign Port fails to declare the same in writing to the Customs-collector at the Customs-port at which such vessel afterwards first arrives,	159	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees; and if any goods liable to export-duty have been shipped in, or any goods liable to import-duty have been shipped in, such vessel at such Foreign Port, such Master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a Customs-port to or from a Foreign Port, as the case may be.
64.—If in the case of any coasting-vessel any of the provisions of section 158, 159, or 160, are not complied with,	158, 159, & 160	the Master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,	161	such person shall be bound to pay a penalty equal to double the amount of Customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a Foreign Port.
66.—If the Master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such Master shall be liable to a penalty not exceeding one thousand rupees.
67.—If any Master of a coasting-vessel contravenes any of the provisions of section 165,	165	such Master shall be liable to a penalty not exceeding five hundred rupees.
68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods, or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,	165	such package, with its contents, shall be liable to confiscation.
69.—If the Master of any coasting-vessel required under section 165 to keep a cargo-book fails correctly to keep, or to cause to be kept, such book, or to produce the same on demand ; or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered ; or if any goods entered as laden, and not noted as delivered, be not on board,	165	such Master shall be liable to a penalty not exceeding five hundred rupees.
70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any Customs-port and carried coast-wise ; or if any goods which have been brought coast-wise are so unladen in any such Port ; or if any goods are found on board of any coasting-vessel without being entered in the manifest or cargo-book or both (as the case may be) of such vessel,	Chapter XV.	such goods shall be liable to confiscation, and the Master of such vessel shall be liable to a penalty not exceeding five hundred rupees.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
71.—If the Master of any coasting-vessel refuses to bring any document to the Customs-collector when so required under section 166,	166	such Master shall be liable to a penalty not exceeding two hundred rupees.
72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular; or counterfeits, falsifies, or fraudulently alters or destroys any such document, or any seal, signature, initials, or other mark, made or impressed by any officer of Customs in the transaction of any business relating to the Customs; or being required under this Act to produce any document, refuses or neglects to produce such document; or being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,	General	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees.
73.—If any person on board of any vessel or boat in any Customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person, or in his possession,	General	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods.
74.—If any officer of Customs requires any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs,	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.
75.—If any officer of Customs or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act,	General	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.
76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for	General	Ditto Ditto.

OFFENCES AND PENALTIES—(continued).

Offences.	Section of this Act to which offence has reference.	Penalties.
the purpose of injuring the Customs-revenue, or abets or connives at any such fraud, or any attempt to practise any such fraud,		
77.—If any Police-officer, whose duty it is, under section 180, to send a written notice or cause goods to be conveyed to a Custom-house, neglects so to do,	180	such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees.
78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person,	General	such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both.
79.—If any officer of Customs, except in the discharge, in good faith, of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods, or shows any samples delivered to him in such capacity; or if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees.
80.—If any person, without the approval of the Customs-collector under section 202, acts as an agent for the transaction of business as therein mentioned,	202	such person shall be liable to a penalty not exceeding five hundred rupees.

Nothing in the second column of the above schedule shall be deemed to have the force of law.

CHAPTER XVII.

PROCEDURE RELATING TO OFFENCES, APPEALS, &C.

169. Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any Port in British India, or any person who has landed from a vessel ;

Power to search on reasonable suspicion. smuggling may search any person on board of any vessel in any Port in British India, or any person who has landed from a vessel ;
 Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

180. When any things liable to confiscation under this Act are seized by any police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

Procedure in respect of things seized on suspicion. seized by any police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.
 In every such case the police-officer seizing the things shall send written notice of their seizure and detention to the nearest Custom-house ; and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest Custom-house, to be there proceeded against according to law.

CHAPTER XVIII.

MISCELLANEOUS.

195. The Customs-collector may, on the entry or clearance of any goods, or at any time while such goods are being passed through the Custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Power to take samples of goods. goods, or at any time while such goods are being passed through the Custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.
 Every such sample shall, if practicable, be at the option of the owner, either restored to him or sold, and the proceeds accounted for to him.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel, or the import or export of goods or baggage, shall so act in any Custom-house, unless such authorization is approved by the Customs-collector.

Custom house agents. of any business relating to the entrance or clearance of any vessel, or the import or export of goods or baggage, shall so act in any Custom-house, unless such authorization is approved by the Customs-collector.
 Such officer may require any person so authorized to give a bond with sufficient security, in any sum not exceeding five thousand rupees, for his faithful behaviour as regards the Custom-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized, suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs Authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

ACT NO. XI. OF 1878.

THE INDIAN ARMS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1878.

An Act to consolidate and amend the law relating to Arms, Ammunition, and Military Stores.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition, and military stores; It is hereby enacted as follows:—

I.—Preliminary.

Short title. 1. This Act may be called “The Indian
Local extent. Arms Act, 1878;” and it extends to the whole
of British India.

Savings. But nothing herein contained shall apply
to—

(a) arms, ammunition, or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(b) the manufacture, conversion, sale, import, export, transport, bearing, or possession of arms, ammunition, or military stores by order of the Government, or by a public servant or a volunteer enrolled under the Indian Volunteers Act, 1869, in the course of his duty as such public servant or volunteer.

2. This Act shall come into force on such day as the Governor-General in Council by notification in the
Commencement. *Gazette of India* appoints.

3. On and from that day the enactments mentioned in the first
Repeal of enactments. schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions, and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published, and prescribed under this Act.

And all such authorities, permissions, licenses, and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date on which this Act comes into force, and shall then cease to have effect.

Interpretation-clause. 4. In this Act, unless there be something repugnant in the subject or context,—

“Cannon” includes also all howitzers, mortars, wall-pieces, mitrailleuses, and other ordnance and machine-guns, all parts of the same, and all carriages, platforms, and appliances for mounting, transporting, and serving the same :

“Arms” includes fire-arms, bayonets, swords, daggers, spears, spear-heads, and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms :

“Ammunition” includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofractor, and other explosive or fulminating material, gunflints, gunwads, percussion-caps, fuses, and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur, or saltpetre :

“Military stores,” in any section of this Act as applied to any part of British India, means any military stores to which the Governor-General in Council may from time to time, by notification in the *Gazette of India*, specially extend such section in such part, and includes also all lead, sulphur, saltpetre, and other material to which the Governor-General in Council may from time to time so extend such section :

“License” means a license granted under this Act, and “licensed” means holding such license :

II.—Manufacture, Conversion, and Sale.

5. No person shall manufacture, convert, or sell, or keep, offer, or

Unlicensed manufacture, conversion, and sale prohibited.

expose for sale, any arms, ammunition, or military stores, except under a license and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same ; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section twenty-seven of this Act shall, without unnecessary delay, give to the Magistrate of the District, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

III.—Import, Export, and Transport.

6. No person shall bring or take by sea or by land into or out of

Unlicensed importation and exportation prohibited.

British India any arms, ammunition, or military stores except under a license and in the manner and to the extent permitted by such license.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition ; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition, and military stores taken from one part of British India to another, by sea or across intervening territory not being part of British India, are taken out of and brought into British India within the meaning of this section.

7. Notwithstanding anything contained in the Sea Customs Act,

Sanction of Local Government required to warehousing of arms, &c. of the Local Government.

1878, no arms, ammunition, or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction

8. [Repealed by Act XI. of 1882.]

9. The Governor-General in Council may, from time to time, by

Power to impose duty on import by land.

notification in the *Gazette of India*, direct that duties not exceeding those specified in the

second schedule* hereto annexed shall be levied upon any articles mentioned in that schedule and brought by land into any part of British India, and may in like manner cancel any such notification.

Power to prohibit transport.

10. The Governor-General in Council may from time to time, by notification in the *Gazette of India*,—

(a) regulate or prohibit the transport of any description of arms, ammunition, or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent and in the manner permitted by such license, and

(b) cancel any such notification.

Explanation.—Arms, ammunition, or military stores, transhipped

Transshipment of arms.

at a port in British India, are transported within the meaning of this section.

11. The Local Government, with the previous sanction of the Governor-General in Council, may, at any places

Power to establish searching-stations.

along the boundary-line between British India

and Foreign territory, and at such distance within such line as it deems expedient, establish searching-posts, at which all vessels, carts, and baggage-animals, and all boxes, bales, and packages in transit, may be stopped and searched for arms, ammunition, and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

12. When any person is found carrying or conveying any arms,

Arrest of persons conveying arms, &c., under suspicious circumstances.

ammunition, or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of

suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him, and take such arms, ammunition, or military stores from him.

Any persons so apprehended, and any arms, ammunition, or military

Procedure where arrest made by person not a Magistrate or a police-officer.

stores so taken, by a person not being a Magistrate or police-officer, shall be delivered over as soon as possible to a police-officer.

All person apprehended by, or delivered to, a police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

The second schedule has been repealed by Act XI. of 1882 (the Indian Tariff Act).

IV.—Going armed and possessing Arms, &c.

13. No person shall go armed with any arms except under a license
Prohibition of going armed without license. and to the extent and in the manner permitted thereby.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, police-officer, or other person empowered by the Local Government in this behalf by name or by virtue of his office.

14. No person shall have in his possession or under his control
Unlicensed possession of fire-arms, &c. any cannon or fire-arms, or any ammunition or military stores, except under a license, and in the manner and to the extent permitted thereby.

During the three months next following the date on which this Act comes into force, nothing in the former part of this section shall apply to the possession by any person of any fire-arms, ammunition, or military stores in any place to which section 32, clause 2, of Act No. XXXI. of 1860, does not apply at such date.

Any person having, within the said period of three months, any fire-arms, ammunition, or military stores in his possession in any such place may, and any person having at the expiry of the same period any fire-arms, ammunition, or military stores in his possession in any such place without a license shall, deposit the same with the officer in charge of the nearest police-station.

If the owner of any thing deposited under this section does not, within the year next following the date on which this Act comes into force, obtain a license authorizing him to possess such thing and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

15. In any place to which section 32, clause 2, of Act No. XXXI. of 1860, applies at the time this Act comes into force, or to which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, specially extend this section, no person shall have in his possession any arms of any description except under a license and in the manner and to the extent permitted thereby.
Possession of arms of any description without license prohibited in certain places.

16. Any person possessing arms, ammunition, or military stores, the possession whereof by him has, in consequence of the cancellation or expiry of a license or by the issue of a notification under section fifteen, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.
Arms of which possession has become unlawful to be deposited at police-station.

If the owner of any thing deposited under this section does not, within three years from the date on which such thing is so deposited, produce a license authorizing him to possess the same, and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

V.—Licenses.

17. The Governor-General in Council may, from time to time, by
Power to make rules as to licenses. notification in the *Gazette of India*, make rules to determine the officers by whom, the

form in which, and the terms and conditions on and subject to which, any license shall be granted; and may by such rules among other matters—

(a) fix the period for which such license shall continue in force;

(b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No. XXXI. of 1860 applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place;

(c) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;

(d) empower any officer of Government to enter and inspect any premises in which arms, ammunition, or military stores are manufactured or kept by any person holding a license of the description referred to in section five or section six;

(e) direct that any such person shall exhibit the entire stock of arms, ammunition, and military stores in his possession or under his control to any officer of Government so empowered, and

(f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition, or military stores covered by the same when called upon by an officer of Government so to do.

Cancelling and suspension of license.

18. Any license may be cancelled or suspended—

(a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a District, or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate, or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license; or

(b) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

VI.—Penalties.

For breach of sections 5, 6, 10, 13 to 17.

19. Whoever commits any of the following offences (namely):—

(a) manufactures, converts, or sells, or keeps, offers, or exposes for sale, any arms, ammunition, or military stores in contravention of the provisions of section five;

(b) fails to give notice as required by the same section;

(c) imports or exports any arms, ammunition, or military stores in contravention of the provisions of section six;

(d) transports any arms, ammunition, or military stores in contravention of a regulation or prohibition issued under section ten;

(e) goes armed in contravention of the provisions of section thirteen;

(f) has in his possession or under his control any arms, ammunition, or military stores in contravention of the provisions of section fourteen or section fifteen;

(g) intentionally makes any false entry in a record or account which, by a rule made under section seventeen, clause (c), he is required to keep;

(h) intentionally fails to exhibit anything which, by a rule made under section seventeen, clause (e), he is required to exhibit; or

(i) fails to deposit arms, ammunition, or military stores, as required by section fourteen or section sixteen,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

20. Whoever does any act mentioned in clause (a), (c), (d), or (f)

For secret breaches of sections 5, 6, 10, 14 and 15. of section nineteen, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway, or to the servant of any public carrier,

and whoever, on any search being made under section twenty-five, conceals, or attempts to conceal, any arms, ammunition, or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

21. Whoever, in violation of a condition subject to which a license

For breach of license. has been granted, does, or omits to do, any act, shall, when the doing or omitting to do such act is not punishable under section nineteen or section twenty, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

22. Whoever knowingly purchases any arms, ammunition, or military

For knowingly purchasing arms, &c., from unlicensed person. stores from any person not licensed or authorized under the proviso to section five to sell the same; or

delivers any arms, ammunition, or military stores into the possession of any person without previously ascertaining that such person is illegally authorized to possess the same,

For delivering arms, &c., to person not authorized to possess them. shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

23. Any person violating any rule made under this Act, and for

Penalty for breach of rule. the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

24. When any person is convicted of an offence punishable under

Power to confiscate.

this Act, committed by him in respect of any arms, ammunition, or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition, or military stores, and any vessel, cart, or baggage-animal used to convey the same, and any box, package, or bale in which the same may have been concealed, together with the other contents of such box, package, or bale, shall be confiscated.

VII.—Miscellaneous.

25. Whenever any Magistrate has reason to believe that any per-

Search and seizure by Magistrate.

son residing within the local limits of his jurisdiction has in his possession any arms, ammunition, or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition, or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person, or in which such Magistrate has reason to believe such arms, ammunition, or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

26. The Local Government may at any time order or cause to be

Seizure and detention by Local Government.

seized any arms, ammunition, or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

27. The Governor-General in Council may, from time to time,

Power to exempt.

by notification published in the *Gazette of India*,—

(a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and

(b) cancel any such notification, and again subject the persons or things, or the part of British India comprised therein, to the operation of such prohibition or direction.

28. Every person aware of the commission of any offence punish-

Information to be given regarding offences.

able under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest police-officer or Magistrate, and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest police-

officer regarding any box, package, or bale in transit which he may have reason to suspect contains arms, ammunition, or military stores in respect of which an offence against this Act has been or is being committed.

29. Where an offence punishable under section nineteen, clause (f), has been committed within three months from the date on which this Act comes into force in any province, district, or place to which section 32, clause 2, of Act XXXI. of 1860 applies at such date, or where such an offence has been committed in any part of British India not being such a district, province, or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the District, or, in a Presidency-town, of the Commissioner of Police.

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates' Act, 1877, in the course of any proceedings instituted in respect of an offence punishable under section nineteen, clause (f), such search shall, notwithstanding anything contained in the said Code or Act, be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

32. The Local Government may, from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year.	Title.	Extent of repeal.
XVIII. of 1841 ...	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
XXX. of 1854 ...	An Act to provide for the levy of Duties of Customs in the Arakan, Pegu, Martaban, and Tenasserim Provinces.	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited." Section 11.
XXXI. of 1860 ...	An Act relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	So much as has not been repealed.
VI. of 1866 ...	An Act to continue Act No. XXXI. of 1860 (relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases), and for other purposes.	The whole.
III. of 1872 ...	The Santhál Parganas Settlement Regulation.	So much of the schedule as relates to Act XXXI. of 1860 and Act VI. of 1866.
IX. of 1874 ...	The Arakan Hills District Laws Regulation, 1874.	So much of the schedule as relates to Act XVIII. of 1841.
XV. of 1874 ...	An Act for declaring the local extent of certain Enactments, and for other purposes.	So much of the first schedule as relates to Act XVIII. of 1841.

THE SECOND SCHEDULE.

[Repealed by Act XI. of 1882.]

ACT NO. I. OF 1879.

THE INDIAN STAMP ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH JANUARY 1879.

An Act to consolidate and amend the law relating to Stamps.

CHAPTER II.

STAMP-DUTIES.

B.—Of Stamps and the Mode of using them.

11. Whoever affixes an adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again;

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instruments and cannot be used for or applied to any other instrument.

How instruments stamped with impressed stamps are to be written.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Only one instrument to be on same stamp.

D.—Of Valuations for Duty.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. Every person having, by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police,

Examination and impounding of instruments.

before whom any instrument chargeable, in his opinion, with duty, is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable, and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates' Act :

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may, from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Instruments not duly stamped inadmissible in evidence, &c.

Proviso.

Provided that—

1st, any such instrument, not being an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates' Act ;

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section 50, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of instrument not to be questioned.

35. When the person impounding an instrument under section 33 has, by law or consent of parties, authority to receive evidence, and admits such

Instruments impounded how dealt with.

instrument in evidence upon payment of a penalty as provided by section 34, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

37. When the Collector impounds any instrument under section 33, or receives any instrument sent to him under the second clause of section 35, he shall adopt the following procedure:—

(a) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify, by endorsement thereon, that it is duly stamped, or that it is not so chargeable (as the case may be), and shall, upon application made to him in this behalf, deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(b) If the Collector is of opinion that such instrument is chargeable with duty, and is not duly stamped, he shall require the payment of the proper duty, or the amount required to make up the same together with a penalty of five rupees; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause a of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, section 37, or section 38, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon, that the proper duty, or (as the case may be) the proper duty and penalty (stating the amount of each), have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34 shall be so delivered before the expiration of one month from the date of such

impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate :

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument :

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

CHAPTER V.

REFERENCE AND REVISION.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 34, the Court to which appeals lie from, or references are made by, such first-mentioned Court, may, of its own motion, or on the application of the Collector, take such order into consideration ; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument ; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 39, or in section 40, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 34, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty :

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 39.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

55. The local Government, subject to the control of the Governor-General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the person by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque, or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note, or property, give a duly stamped receipt for the same.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

61. Any person drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating any bill of exchange, cheque, or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and any person voting or attempting to vote under any proxy not duly stamped,

shall, for every such offence, be punished with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 34, section 37, or section 50, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument, upon the person who paid such penalty.

62. Any person required by section 11 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

63. Any person who, with intent to defraud the Government of any duty,

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits, fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

64. Any person who, being required under section 58 to give a

Penalty for refusal to give receipt and for devices to evade duty on receipts.

receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for not making out policy,

65. Every person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

(b) makes, executes, or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

67. Whoever, with intent to defraud the Government of duty,

Penalty for post-dating bills, &c. :

draws, makes, or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same,

and whoever, with the like intent, practises, or is concerned in, any act, contrivance, or device not specially provided for by this Act or any other law for the time being in force,

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

made under section 55, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

69. No prosecution in respect of any offence punishable under this

Institution and conduct of prosecutions.

Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted with-

out the sanction of the Collector or such other officer as the local Government generally, or the Collector specially, authorizes in that behalf.

The Chief Controlling Revenue Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

71. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

Provided that no person shall be punished twice for the same offence.

ACT NO. IV. OF 1879.

THE INDIAN RAILWAY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 13th MARCH 1879.

An Act to consolidate and amend the law relating to railways in India.

WHEREAS it is expedient to consolidate and amend the law relating to railways in India; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Railway Act, 1879;"

It extends to the whole of British India and, so far as regards subjects of Her Majesty the Empress of India, to the dominions of Princes and States in India in alliance with Her said Majesty;

Local extent.

Commencement. And it shall come into force on the first day of July, 1879.

Repeal of Acts. 2. On and from that day, the Acts specified in the first schedule hereto annexed shall be repealed.

All rules made, notifications published, and powers conferred under any of such Acts, or any enactment thereby repealed, shall (so far as they are consistent herewith) be deemed to have been respectively made, published, and conferred under this Act.

Nothing in the Carriers' Act, 1865, shall apply to carriers by railway.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,—

"Railway." "Railway" means a railway for the public conveyance of passengers or goods;

it includes—

(a) all land within the fences or other boundary-marks prescribed under section fifty-two;

(b) all lines of rail, sidings, or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, offices, warehouses, fixed machinery, and other works constructed for the purposes of, or in connection with, a railway;

(d) all vessels and rafts used for the purpose of carrying on the traffic of a railway.

In section four, "railway" includes a railway under construction, and in the remaining part of this section and in the following sections

(namely), six, eight, sixteen, twenty-five, thirty, thirty-three thirty-four, forty to forty-six (both inclusive), fifty-two, and fifty-three, "railway" includes a railway under construction and a railway not used for the public conveyance of passengers or goods :

"Railway-Administration" means, in the case of a railway worked by Government or a Native State, the manager of such railway, and in the case of a railway worked by a company or private individual, such company or individual ;

"Railway-servant" means any person employed by a Railway-Administration to perform any function in connection with a railway :

and in section twenty-five, last clause, sections twenty-six, twenty-seven, thirty-eight, and forty-two, includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-Administration.

4. It shall be lawful, with the previous sanction of the Governor-General in Council, to use on every railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby.

CHAPTER II.

DUTIES OF THE RAILWAY-ADMINISTRATION.

5. No railway, or portion or extension of, or addition to, a railway, shall be opened for the public conveyance of passengers until the Railway-Administration has given to the Governor-General in Council notice in writing of the intention of opening the same, and until an officer appointed by the Governor-General in Council to inspect such railway, portion, extension, or addition, has, after inspection thereof, reported in writing to the Governor-General in Council that in his opinion the opening of the same would not be attended with danger to the public using the same.

6. Every Railway-Administration shall, within forty-eight hours after the occurrence upon the railway of—

(a) any accident attended with loss of human life or serious injury to person or property,

(b) any accident of a description usually attended with such loss or injury, and

(c) any accident of any other description which the Governor-General in Council may, from time to time, direct to be notified, give notice thereof to the Local Government ;

and the station-master nearest to the place at which the accident occurs, or, where there is no station-master, the officer in charge of the section of the railway on which the accident occurs, shall, without unnecessary delay, give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the police-

station in the jurisdiction of which the accident occurs, or to such other Magistrate and police-officer as the Local Government from time to time appoints in this behalf.

7. Every Railway-Administration shall make up and deliver to the Governor-General in Council a return of accidents occurring in the course of the public traffic upon the railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor-General in Council from time to time directs.

General rules for working railway.

8. Every Railway-Administration shall make general rules for the following purposes (that is to say):—

(a) for regulating the mode in which, and the speed at which, carriages and wagons used on the railway are to be moved or propelled ;

(b) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon ;

(c) for regulating the provision to be made for the accommodation and convenience of passengers ;

(d) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods ; and

(e) generally for regulating the travelling upon, and the use, working, and management of, the railway ;
and may, from time to time, alter any such rules.

Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

No such rule shall take effect unless it is consistent with this Act, and until it has received the sanction of the Governor-General in Council.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the railway-servants and the public in such manner as the Governor-General in Council, from time to time, directs.

The Governor-General in Council may at any time cancel any such rule.

9. An abstract of this Act, and to copy of the time-tables and tariff of charges which may, from time to time, be published for any railway by any Railway-Administration, shall be exhibited in some conspicuous place at each station of such railway, so that they may be easily seen and read.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language (if any) as the Governor-General in Council may direct.

CHAPTER III.

CARRIAGE OF PROPERTY.

10. Every agreement purporting to limit the obligation or responsibility imposed on a carrier by railway by the Special contract limiting liability. Indian Contract Act, 1872, sections 151 and 161, in the case of loss, destruction, or deterioration of, or damage to, property, shall, in so far as it purports to limit such obligation or responsibility, be void, unless—

(a) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(b) is otherwise in a form approved by the Governor-General in Council.

11. When any property mentioned in the second schedule hereto annexed is contained in any parcel or package delivered to a carrier by railway, the carrier shall not be liable for loss, destruction, or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some railway-servant specially authorized in this behalf.

When any property of which the value and nature have been declared under this section has been lost, destroyed, or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage, or deterioration, shall not exceed the value so declared.

12. A carrier by railway shall in no case be answerable for loss, destruction, or deterioration of, or damage to, No liability for unbooked luggage. any passenger's luggage, unless a railway-servant has booked and given a receipt for the same.

13. In any suit against a carrier by railway for compensation for loss, destruction, or deterioration of, or damage to, property delivered to a railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration, or damage was caused. Plaintiffs not required to prove negligence.

14. If any person fails to pay on demand any sum due by him to a carrier by railway for conveyance of any property by railway, or for the custody of any property, or for demurrage or wharfage in respect of the same, the Railway-Administration may detain the whole or any part of such property, or, if the same have been removed from the railway, any other property of such person then on such railway or thereafter coming into the possession of the Railway-Administration ;

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers, or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and

expenses of such detention, notice, and sale or, if such person fails to remove from the railway within a reasonable time any property so detained, the whole of such property ;

and may, out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus (if any) of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto ;

or such carrier may recover any such sum by suit.

15. The owner or person having the care of any property which has been carried upon any railway, or is brought into any station or warehouse for the purpose of being carried upon a railway, shall, on demand by any railway-servant appointed in this behalf by the Railway-Administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of such property.

Written account of property to be given on demand.

16. No passenger shall take with him on a railway, and no person shall deliver or tender for carriage upon any railway, any dangerous luggage or goods without giving notice of their nature to a railway-servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same.

Dangerous goods.

Any railway-servant may refuse to carry upon a railway any luggage or parcel which he suspects to contain dangerous goods, and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same ;

and in case any such luggage or parcel is received for the purpose of being carried upon a railway, any railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

CHAPTER IV.

CARRIAGE OF PASSENGERS.

17. Every person desirous of travelling on a railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare ;

and every passenger shall, when required, show his ticket to any railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any railway-servant duly authorized to collect tickets.

Tickets to be shown and given up on demand.

18. At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished.

Fares and tickets at intermediate stations.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the

Preferential right of ticket-holders.

preference; and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets:

Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government, who, by virtue of any contract with the Government, or, in the case of a railway worked by Government, of any direction of the Governor-General in Council, are entitled to be conveyed on a railway in preference to, or in priority over, the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which, they have received their tickets.

Any passenger to whom a ticket has been furnished at any station, and for whom there is no room, shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

19. Except with the permission of the Railway-Administration or of such officer as it appoints in this behalf, no person shall enter any carriage used on any railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

20. Any passenger found suffering from an infectious disease in a railway-carriage or in any place on a railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any railway-servant;

any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

CHAPTER V.

OFFENCES AND PROCEDURE.

(A).—*Offences by the Railway-Administration.*

21. Any Railway-Administration opening, in contravention of section five, any railway, or any portion or extension of, or addition to, a railway, shall forfeit to Government the sum of one thousand rupees for every day during which the same continues open in contravention of that section.

22. Any Railway-Administration omitting to give notice as required by section six shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues.

23. Any Railway-Administration failing to deliver any return mentioned in section seven within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section eight, or to exhibit any abstract or copy mentioned in section nine in manner required by that section, shall forfeit to Government the sum of fifty rupees for every day during which such failure continues.

(B.)—Offences by Railway-Servants.

24. Any station-master or other person omitting to give notice as required by section six shall be punished with fine which may extend to fifty rupees.

25. Any railway-servant who is in a state of intoxication whilst actually employed upon a railway in the discharge of any duty,

or who negligently omits to perform his duty,

or who performs the same in an improper manner,

shall be punished with fine which may extend to fifty rupees ;

or if the duty in any of the cases aforesaid be such that the negligent omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

For endangering the safety of persons.

26. If any railway-servant in the discharge of his duty endangers the safety of any person—

(a) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section eight ; or

(b) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice ; or

(c) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

27. Every railway-servant shall be deemed a “public servant” within the meaning of sections 161, 162, 163, 164. and 165 of the Indian Penal Code.

In the definition of legal remuneration contained in the said section 161, the word “Government” shall, for the purposes of this section, be deemed to include any employer of a railway-servant as such.

Amendment of Penal Code, section 161.

28. Any railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

For compelling passengers to enter carriages already full.

(C.)—Offences by persons generally.

For not giving account of goods or giving false account.

29. Any person required under section fifteen to give an account of the quantity and description of any property who neglects or refuses to give such account,

or who wilfully gives a false account,

shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolas) of such property ; and such fine shall be in addition to any charge to which such property may be liable.

30. Whoever, in contravention of section sixteen, takes with him

For taking dangerous goods on railway, or delivering such goods without notice.

any dangerous goods on a railway, or delivers or tenders any such goods for the purpose of being carried upon a railway, shall be punished with fine which may extend to two hundred rupees.

31. Any passenger travelling on a railway without a proper ticket,

For travelling without ticket, or not showing or delivering up ticket.

or having such a ticket and not showing or delivering up the same when so required under section seventeen, shall be liable to pay the fare

of the class in which he is found travelling, from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled.

Every such fare shall, on application by a railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were a fine, and shall, when recovered, be paid to the Railway-Administration.

For evading payment of fare.

32. Any person who defrauds, or attempts to defraud, any carrier by railway—

(a) by travelling, or attempting to travel, on any railway without having previously paid his fare;

(b) riding or attempting to ride in or on a carriage or by a train of a higher class than that for which he has paid his fare;

(c) by using or attempting to use a ticket on any day for which such ticket is not available;

(d) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

or who wilfully alters or defaces his ticket so as to render the date, number, or other material portion thereof illegible,

For altering ticket.

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section thirty-one, and shall, when recovered, be paid to the Railway-Administration.

33. Any passenger who gets into or upon, or attempts to get into

For entering carriage in motion.

or upon, or quits, or attempts to quit, any carriage upon any railway, while such carriage is

in motion, shall be punished with fine which may extend to twenty rupees;

and any passenger who rides, or attempts to ride, on the steps, or

For riding on the steps.

any other part of a carriage, upon any railway, except on those parts which are intended for

the accommodation of passengers,

shall be punished with fine which may extend to fifty rupees.

34. Any person who, without the permission of the Railway-Ad-

For riding on engine, ministration, rides or attempts to ride upon
tender, &c. any locomotive-engine or tender upon any rail-
way ; or in or upon any vehicle not appropriated to the carriage of pas-
sengers,

shall be punished with fine which may extend to one hundred
rupees.

35. Any person who, without the consent of his fellow-passengers,

For smoking.

if any, in the same compartment, smokes in or
upon any railway-carriage, except in a carriage
or compartment specially provided for the purpose, shall be punished
with fine which may extend to twenty rupees ;

and any person who persists in so smoking (except as aforesaid)
after being warned by any railway-servant to desist may, in addition to
incurring the liability above-mentioned, be removed by any railway-ser-
vant from any such carriage, and from the premises of the railway,
and, where he has paid his fare and obtained a ticket, shall forfeit such
fare and ticket.

36. Any person who is in a state of intoxication, or who commits

For intoxication or uni- any nuisance or act of indecency in any rail-
sanee. way-carriage, or upon any part of any railway ;

or who wilfully and without lawful excuse interferes with the com-
fort of any passenger, or extinguishes any lamp in any railway-carriage,
shall be punished with fine which may extend to fifty rupees ; and
may be removed by any railway-servant from any such carriage, and
also from the premises of the railway, and, where he has paid his fare
and obtained a ticket, shall forfeit such fare and ticket.

37. If any carriage, compartment, room, or place be reserved by the

For entering carriage or Railway-Administration for the exclusive use
room reserved for females. of females, any male person who, without law-
ful excuse, enters such carriage, compartment, room, or place knowing
the same to be reserved as aforesaid, or remains therein after having
been informed of its having been so reserved, shall be punished with
fine which may extend to one hundred rupees,

and may be removed therefrom, and also from the premises of the
railway, by any railway-servant,

and, where he has paid his fare and obtained a ticket, shall forfeit
such fare and ticket.

38. Whoever wilfully obstructs or impedes any railway-servant in

For obstructing railway- the discharge of his duty shall be punished
servant in his duty. with fine which may extend to one hundred
rupees.

39. Any passenger wilfully entering a carriage or compartment

For entering carriage containing the maximum number of passengers
already full. which has been denoted thereon in accordance
with a rule made and notified under section eight, shall be punished
with fine which may extend to one hundred rupees.

40. Any person who, without authority or reasonable excuse, makes,
For removing signals or alters, shows, hides, removes, or extinguishes
injuring carriage, &c. any signal or light upon any railway, or upon
any engine, carriage, wagon, or other vehicle upon a railway,
or who negligently damages any engine, carriage, wagon, or other
vehicle belonging to a railway, or any warehouse, building, machine,
fence, or other thing so belonging,
or who needlessly interferes with the means of communication pro-
vided in any train between the guard and the engine-driver or pas-
sengers,
shall be punished with fine which may extend to one hundred
rupees.

41. Any person who unlawfully enters upon a railway shall be
For trespass. punished with fine which may extend to twenty
rupees; and if any person so entering refuses
For refusing to leave on to leave such railway on being requested to do
request. so by any railway-servant, or by any other per-
son on behalf of the Railway-Administration, he shall be punished with
fine which may extend to fifty rupees, and may be immediately removed
from such railway by such servant or other person as aforesaid.

42. The owner or person in charge of any bulls, cows, bullocks,
For cattle-trespass within calves, elephants, camels, buffaloes, horses,
railway-fences. mares, geldings, ponies, colts, fillies, mules, asses,
pigs, rams, ewes, sheep, lambs, goats, and kids straying on any railway
provided with fences suitable for the exclusion of such animals, shall be
punished with fine which may extend to ten rupees for each animal, in
addition to any amount that may be recovered under the Cattle-Trespass
Act, 1871.

Whenever any such animals are wilfully and unlawfully driven, or
For wilfully driving cat- knowingly and unlawfully permitted to be, on
tle on fenced railway; any railway provided with fences suitable for
the exclusion of such animals,

and whenever any such animals are wilfully driven, or knowingly
on unfenced railway. permitted to be, on any railway not so provided,
otherwise than for the purpose of lawfully
crossing the railway, or for any other lawful purpose,

the person in charge of such animals, or if he cannot be identified,
then the owner of the said animals, shall be punished with fine which
may extend to fifty rupees for each animal, in addition to any amount
that may be recovered under the same Act.

All fines imposed under this section may, if the convicting Magis-
Recovery of fines and trate so direct, be recovered in manner provided
payment of compensation. by section twenty-five of the said Cattle-Tres-
pass Act, 1871, and may be appropriated in whole or in part in com-
pensation for loss or damage proved to his satisfaction.

The expression "public road" in sections eleven and twenty-six of
Amendment of Act I. of the same Act shall be deemed to include a rail-
1871, ss. 11 and 26. way. And any railway-servant may exercise
the powers of seizure provided by the said section eleven.

43. Whoever knowing or having reason to believe that any engine
For opening or not pro- or train is approaching along a railway opens
perly shutting gates any gate which the Railway-Administration

has set up on either said of the railway across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any vehicle, animal, or other thing, across the railway ;

and whoever at any time, in the absence of a gate-keeper, omits to shut and fasten such gate as soon as he and any vehicle, animal, or other thing under his charge have passed through the same, shall be punished with fine which may extend to fifty rupees.

For minors obstructing
line or throwing stones at
train.

44. Whenever any minor under twelve years of age unlawfully—

(a) places or throws, or attempts to place or throw, upon or across a railway, any wood, stone, or other thing, or

(b) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key, or other thing belonging to the permanent-way of a railway, or

(c) throws or causes to fall, or attempts to throw or cause to fall, against, into, or upon any engine, tender, carriage, or other vehicle used upon a railway, any wood, stone, or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond, binding himself, in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section so to do shall be punished with fine which may extend to fifty rupees.

45. Whoever wilfully does any act, or wilfully omits to do what he

For wilful act or omission
endangering persons on
railway.

is legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any railway, shall be punished with transportation (or, in the case of an European or American, penal servitude) for a term of not less than seven years, or with imprisonment for a term which may extend to ten years.

46. Whoever rashly or negligently does any act, or omits to do

For rash or negligent
act.

what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a railway, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

47. Every driver or conductor of an omnibus, carriage, or other

Disobedience of omnibus,
&c., drivers to railway-
servants.

vehicle, shall, while in or upon any station-yard or other premises forming part of a railway, obey the reasonable directions of any railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

(D.)—*Arrest of Offenders.*

48. If any person commits any offence punishable under this

Arrest for offences punishable under this Act of offender whose name is unknown, &c.

Act, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway-servant or police-officer, or any other person whom such railway-servant or police-officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

49. Every person committing any offence mentioned in sections

Arrest for offences against certain sections.

eight, twenty-five, twenty-six, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five, and forty-six, may be arrested without any warrant or written authority by any railway-servant or police-officer, or by any other person whom such servant or officer may call to his aid ;

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

(E.)—*Jurisdiction.*

50. No Magistrate other than a Presidency Magistrate and a Magis-

Magistrates having jurisdiction.

trate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Any person committing any offence against this Act or the rules

Place of trial.

made under it shall be triable for such offence in any place in which he may be found, or which

the Local Government may, from time to time, notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

Every notification under this section shall be published in the local official Gazette, and a copy thereof shall also be exhibited in some conspicuous place at each of such railway-stations as the Local Government may direct, so that it may be easily seen and read.

(F.)—*Saving of other Criminal Laws.*

51. Nothing in this Act shall be deemed to prevent any person

Saving of prosecutions under other laws.

from being arrested, prosecuted, or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it :

Provided that no person shall be punished twice for the same offence.

CHAPTER VI.

MISCELLANEOUS.

52. The Governor-General in Council, or the Local Government

Power of Government to make rules as to fences, gates, and bars.

with the previous sanction of the Governor-General in Council, may, from time to time,

(a) that boundary-marks or fences be provided for any railway or any part thereof, and for roads constructed in connection therewith ;

(b) that gates or bars be erected at places where any railway crosses a road on the level ; and

(c) that persons be employed to open and shut such gates or bars ; and may by such rules determine what kind of fences shall, for the purposes of section forty-two, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-Administration wilfully neglecting or violating any rule made under this section shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

53. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, declare what Government or other Authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a railway.

Power to declare Local Government in respect of any railway.

54. The Governor-General in Council may, by notification, extend this Act or any portion thereof to any tramway worked by steam.

Power to extend Act to steam-tramways.

THE FIRST SCHEDULE.

ACTS REPEALED.

(See section 2.)

Number and year.	Title.
XVIII. of 1854 ...	An Act relating to Railways in India.
XXXI. of 1867 ...	An Act to render penal certain offences committed by servants of Railway Companies.
XIII. of 1870 ...	An Act to apply the provisions of Act No. XVIII. of 1854 to Railways belonging to, or worked by, Government.
XXV. of 1871 ...	An Act to amend the Railway Act.

THE SECOND SCHEDULE.

(See section 11.)

- (a) Gold or silver, coined or uncoined, manufactured or unmanufactured ;
- (b) plated articles ;
- (c) cloths and tissue and lace of which gold or silver forms part ;
- (d) precious stones, jewellery, trinkets ;
- (e) watches, clocks, or time-pieces of any description ;
- (f) Government securities ;
- (g) Government stamps ;
- (h) bills of exchange, hundís, promissory notes, bank-notes, orders, or other securities for payment of money ;
- (i) maps, writings, title-deeds ;
- (j) paintings, engravings, lithographs, photographs, carvings, sculpture, and other works of art ;
- (k) glass, china, marble ;
- (l) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials ;
- (m) shawls ;
- (n) lace ;
- (o) opium ;
- (p) ivory, ebony, sandalwood, sandalwood-oil ;
- (q) musical and scientific instruments.

ACT NO. XVIII. OF 1879.
THE LEGAL PRACTITIONERS' ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH OCTOBER 1879.

An Act to consolidate and amend the law relating to Legal Practitioners.

CHAPTER III.
OF PLEADERS AND MUKHTÁRS.

7. On the admission, under section 6, of any person as a pleader or mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

9. Every mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein, and situate within the same limits; and subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead, and act in any such Criminal Court and any Court subordinate thereto.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7, and has been enrolled in such Court or in some Court to which it is subordinate:

Provided that persons who have been admitted as revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsifs Court in the said territories, and, on being so enrolled, may appear, plead, and act in such Court in suits under Bengal Act No. VIII. of 1869 *(to amend the procedure in suits between Landlord and Tenant)*, or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

CHAPTER IV.

OF REVENUE-AGENTS.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section 18, and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

CHAPTER V.

OF CERTIFICATES.

26. When any pleader, mukhtár, or revenue-agent, is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

CHAPTER VII.

PENALTIES.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail, for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtár, or revenue-agent whilst he has been contravening the provisions of either of such sections.

33. Any pleader, mukhtár, or revenue-agent, failing to deliver up his certificate as required by section 26, shall be liable, by order of the Court, Authority, or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

34. Any pleader, mukhtár, or revenue-agent, who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtár, or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section 32, 33, or 34, shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue Authority where the order has been passed by an officer subordinate to such Authority.

Penalty for receiving or giving commission. **36.** Whoever commits any of the following offences :—

(a) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business ;

(b) retains any gratification out of remuneration paid or delivered, or agreed to be paid or delivered, to any legal practitioner for such employment ;

(c) being a legal practitioner, tenders, gives, or consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

MISCELLANEOUS.

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtár, or revenue-agent, shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

Pleaders, &c., not to be suspended or dismissed without being heard.

ACT NO. XXI. OF 1879.

THE FOREIGN JURISDICTION AND EXTRADITION ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 14TH NOVEMBER 1879.

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

WHEREAS, by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of India in Council has power and

Preamble. jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor-General in Council; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act, and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879:

Extent.

It extends to the whole of British India; to all Native Indian subjects of Her Majesty beyond the limits of British India; and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

and it shall come into force on the passing thereof.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

Saving of other laws and of treaties.

2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions, and rules made, and

Repeal.

all existing notifications, summonses, warrants, orders, and directions issued, under that Act, shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

“Political Agent.”

“Political Agent” means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India :

(2) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India ; and

“European British subject.”

“European British subject” means a European British subject as defined in the Code of Criminal Procedure.

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

4. The Governor-General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor-General in Council from time to time thinks fit.

5. A notification in the *Gazette of India* of the exercise by the Governor-General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

6. The Governor-General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace ; and every such Justice of the Peace shall have, in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

The Governor-General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April, 1872, by the Governor-General in Council or the Governor in Council of the Presidency of Fort

St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, extend—

(a) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(b) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

[*Repealed by Act X. of 1882.*]

CHAPTER IV.

EXTRADITION.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

if such Political Agent thinks that the offence is one which ought to be inquired into in such State;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor-General in Council by a notification in the *Gazette of India*.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor-General in Council, or by the Governor of the Presidency of Fort St. George in Council, or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

14. Whenever a requisition is made to the Governor-General in

Requisitions for extradition by the Executive of any part of British dominions or Foreign power.

Council or any Local Government by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or

the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor-General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

15. Whenever any person accused or suspected of having committed an offence out of British India is within

Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India.

the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section

eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Any Magistrate issuing a warrant under this section shall, when

Magistrate to inform Political Agent or Local Government.

the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

16. No person arrested on a warrant issued by a Magistrate under

Person arrested to be released after certain time if not proceeded against.

section fifteen shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section eleven from the Political Agent for any State for the delivery of such person, or an order with reference to him under

fourteen from the Governor-General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

17. The provisions of the Code of Criminal Procedure in respect of bail shall apply in the case of any person arrested under section fifteen in the same manner as if such person were accused of committing in British India the offence with which he is charged.

CHAPTER V.

MISCELLANEOUS

Power to make rules.

18. The Governor-General in Council may, from time to time, make rules to provide for—

(1) the confinement, diet, and prison-discipline of British subjects, European or native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

(3) generally to carry out the purposes of this Act.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV.; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal:

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN

SECTION ELEVEN.

Sections 206, 208, and 224; sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310, and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

ACT NO. III. OF 1880.

THE CANTONMENTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH JANUARY 1880.

An Act to amend the law relating to Cantonments.

WHEREAS it is expedient to amend the law relating to cantonments ;
Preamble. It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called “The Cantonments Act, 1880.”

This section, section two, and section twenty-four apply to the whole of British India. The remaining portions of this Act extend to the whole of British India except the territories respectively administered by the Governor of Fort St. George in Council and the Governor of Bombay in Council. The Governor of Fort St. George in Council or the Governor of Bombay in Council may, by notification in the official Gazette, extend any such portion to any place under his administration ; and, from the date on which any suc^l. portion is so extended to any place, such of the enactments for the time being in force in such place as are in any way inconsistent with, or repugnant to, such portion, shall cease to have effect in such place.

Local extent.

Enactments inconsistent with this Act in Madras and Bombay cantonments.

any suc^l. portion is so extended to any place, such of the enactments for the time being in force in such place as are in any way inconsistent with, or repugnant to, such portion, shall cease to have effect in such place.

2. Act No. XXII. of 1864 (*to provide for the administration of Military Cantonments*) is hereby repealed ; but all orders, declarations, rules, and regulations made, powers conferred, and Courts established under that Act, shall be deemed to be respectively made, conferred, and established under this Act.

Repeal of Act XXII. of 1864.

All references to the said Act No. XXII. of 1864 in enactments passed subsequently thereto shall be read as if made to this Act.

References to Act XXII. of 1864.

CHAPTER II.

CRIMINAL JURISDICTION.

3. Every person invested by the Local Government, under the Code of Criminal Procedure, with the powers of a Magistrate of the first class within the limits of any cantonment, shall be styled the Cantonment Magistrate.

Cantonment Magistrate.

and shall be deemed a Magistrate in charge of a division of a district within the meaning, and for the purposes, of the said Code.

4. Every person invested by the Local Government, under the provisions of the said Code, with the powers of a Magistrate of the second or third class within the limits of any cantonment, shall be styled the Assistant Cantonment Magistrate.

CHAPTER III.

CIVIL JURISDICTION.

5. Whenever the Local Government establishes within the limits of any cantonment a Court of Small Causes under Act No. XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), the Cantonment Magistrate, if there be a Cantonment Magistrate, shall be the Judge of the Court so established.

The Local Government shall declare and may from time to time alter the pecuniary limit of the jurisdiction of every such Court, but such limit shall in no case exceed five hundred rupees.

6. The Local Government may invest any Assistant Cantonment Magistrate with the powers of a Judge of a Court of Small Causes to try suits instituted in any Court referred to in section five; provided that no Assistant Cantonment Magistrate shall have jurisdiction to try suits for an amount exceeding fifty rupees.

7. All the provisions of the said Act shall be applicable to every such Court, and to all suits instituted in any such Court, except as is herein otherwise provided.

8. Whenever a Court of Small Causes is established in any cantonment, the jurisdiction exercised in such cantonment by any officer under Act No. III. of 1859 (*for conferring Civil Jurisdiction in certain cases upon Cantonment Joint-Magistrates*) shall cease, and so much of any Act as authorizes the commanding-officers of stations or cantonments to convene military Courts of requests for the trial of actions of debt and other personal actions, shall cease to have effect within the limits of such cantonment.

CHAPTER IV.

POLICE.

9. The police-force employed in any cantonment shall be deemed to be part of the general police-force under the Local Government in whose territories such cantonment is situate, within the meaning of Act No. V. of 1861 (*for the Regulation of Police*), section two, and all the provisions of the said Act shall be applicable to such force.

The administration of the police within the limits of any cantonment in which there is a Cantonment Magistrate shall be vested in the District Superintendent subject to the general control and direction of the commanding-officer of such cantonment.

10. The Local Government may extend section thirty-four of the said Act No. V. of 1861 to any cantonment situate in the territories administered by such Government.

11. The commanding-officer of a cantonment may send any process requiring service or execution by any means not immediately at his disposal to the chief police-officer in the cantonment for service or execution through the cantonment-police; and the said chief police-officer shall serve or execute such process in the same manner as if it had been issued by the Cantonment Magistrate, and subject to the same rules.

12. The Local Government may, by notification in the official Gazette, extend the provisions of Act No. XX. of 1856 to cantonments. *(to make better provision for the appointment and maintenance of Police Chaukidars in Cities, Towns, Stations, Suburbs, and Bázars in the Presidency of Fort William in Bengal)* to any cantonment to which a Cantonment Magistrate may be appointed; and the Cantonment Magistrate of any cantonment to which the said Act is so extended may exercise all the powers vested in a Magistrate by that Act, subject only to the control of the Magistrate of the District and the Local Government.

Whenever any such Cantonment Magistrate is absent, or when his office is temporarily vacant, the Magistrate of the District shall, during such absence, or until the Local Government fills up the vacancy, carry out the provisions of the same Act when so extended as aforesaid.

13. The Local Government may order that any cantonment to which the provisions of the said Act No. XX. of 1856 are extended shall be divided into any number of cantonment-divisions, and may determine the nature of the tax to be levied in each such division according to section ten of the same Act.

CHAPTER V.

SPIRITUOUS LIQUORS.

14. If, within any cantonment, or within any limits around such cantonment prescribed by the Local Government, any person not amenable to the Articles of War, or any sutler or camp-follower, knowingly barter, sells, or supplies, or offers or attempts to barter, sell, or supply, any spirituous liquor, wine, or intoxicating drug to, or for the use of, any European soldier, or to or for the use of any European or Eurasian being a camp-follower or a soldier's wife, without a written license from the Officer

Commanding or from some person authorized by the Officer Commanding to grant such license, the person so bartering, selling, or supplying, or offering or attempting to barter, sell, or supply, such liquor, wine, or drug, shall be liable, on conviction, to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months, or, in lieu of such fine or imprisonment, to the punishment of whipping, as prescribed for offences under section two of Act No. VI. of 1864 (*to authorize the punishment of whipping in certain cases*), subject to all the provisions of that Act.

15. If any person convicted of an offence under section fourteen is

Presumption in case of again convicted of an offence under that section second conviction. **tion, any spirituous liquor, wine, or intoxicating drug within such cantonment or limits which, at the time of the commission of such subsequent offence, belongs to him, or is in his possession, shall, without further proof, be deemed to be in his possession for the purpose of being supplied to European soldiers contrary to the provisions of this Act.**

16. If within such cantonment or limits any camp-follower or

Penalty on certain persons having in possession within cantonments more than certain quantity of spirituous liquor, &c., without permit. **military pensioner, or the wife or the widow of any soldier, camp-follower, or military pensioner, removes, conveys, or has, in his or her possession, any quantity of spirituous liquor or wine exceeding one ser or quart, without a permit to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act, every such person shall be liable upon conviction to fine which may extend to fifty rupees, and for any subsequent offence to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months: provided that nothing in this section contained shall apply to any liquor brought into a cantonment for the private use of any commissioned officer.**

17. If any person subject to the provisions of this Act is found

Arrest of offenders under section 14 or 16, and seizure of spirituous liquor, &c. **committing any offence contrary to section fourteen or section sixteen, any police-officer may immediately without warrant arrest such person, and also seize any spirituous liquor, wine, or intoxicating drug, together with any vessel containing the same, and anything used for the purpose of removing, conveying, or concealing the same, which may be found in his possession, and shall thereupon without delay take such person, together with the things so seized, before the Cantonment Magistrate or other officer having jurisdiction to punish the offender.**

18. In case of a conviction for any offence under section fourteen

Confiscation of such liquor, &c. **or section sixteen, the Cantonment Magistrate or other officer may adjudge any liquor, wine, or intoxicating drug in respect of which the accused is convicted, and any other spirituous liquor, wine, or intoxicating drug found in his possession at the time of committing the offence, and any vessel containing the same, together with anything used for the purpose of conveying, removing, or concealing the same or any part thereof, to be confiscated; and such Magistrate or officer may order the whole or any part**

or parts of any fine imposed under this Act to be paid, as soon as the same is realized, to the person upon whose information such conviction takes place, or to the officer who has apprehended the offender or seized any of the goods adjudged to be confiscated.

19. Anything seized under section seventeen in respect of which any person is charged with an offence under this Act may be ordered to be detained until the person in whose possession the same has been seized is convicted or acquitted of the offence charged.

If such person is acquitted, anything so seized shall be restored; if he is convicted, such of the things only, if any, as are not adjudged by the Cantonment Magistrate or other officer to be confiscated, shall be restored: the remainder shall be dealt with as confiscated.

20. The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes by recognized medical practitioners, chemists, or druggists.

CHAPTER VI.

MUNICIPAL TAXATION.

21. The Local Government may from time to time, with the previous sanction of the Governor-General in Council, by notification in the official Gazette, impose in any cantonment any tax which, under any enactment in force at the date of such notification, can be imposed in any municipality, within the territories administered by such Government, and may, with the like sanction and by a like notification, abolish any tax so imposed.

22. When any tax is leviable in a cantonment under section twenty-one, the Local Government may, from time to time, by notification in the official Gazette, apply or adapt to such cantonment the provisions of any enactment or rules in force at the date of such notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

23. The proceeds of all taxes levied in any cantonment under section twenty-one shall, after defraying therefrom the cost of assessing and collecting the same, be applied in such cantonment, under the directions of the Local Government, to the maintenance of the police-force and the carrying out of measures under the rules made under section twenty-five.

24. Notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may, by an order in writing, prohibit the levy of the whole or any part of any tax in any cantonment, or exempt any person by name or in virtue of his office, or any class of persons, from the operation of any such tax, and may, by a like order, rescind any such prohibition or exemption.

CHAPTER VII.

SUBSIDIARY RULES.

25. The Local Government may, from time to time, make rules consistent with this Act to provide within the limits of any cantonment for the matters hereinafter mentioned.

Power to make cantonment-rules.

The rules made under this section may be general for all cantonments in the territories administered by the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government directs.

Rules may be general or special.

26. No rule made under section twenty-five shall have effect until the same has been confirmed by the Governor-General in Council. A copy of every such rule when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding-officer directs.

Rules to be confirmed by Governor-General in Council.

For what matters rules may provide.

27. The rules made under section twenty-five may provide for all or any of the following matters:—

1st—regulating, in cases in which the land within the limits of the cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed;

2nd—maintaining proper registers of immoveable property within the limits of the cantonment, and providing for the registration of transfers of such property;

3rd—regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers;

4th—regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment, or for carrying out any rules made under section twenty-five; and the appointment of the necessary servants and establishments;

5th—the definition and prohibition of public nuisances;

6th—the maintenance generally of the cantonment in a proper sanitary condition; the prevention and cure of disease; the management and regulation of the public roads, of conservancy and drainage; the regulation and inspection of public and private necessities, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, of slaughter-houses, public markets, burial and burning grounds, and of all offensive or dangerous trades and occupations;

7th—inspecting and controlling brothels and preventing the spread of venereal disease;

8th—the supervision and regulation of public wells, tanks, springs, or other sources from which water is or may be made available for public use ;

9th—the execution and promotion of works of public utility and convenience ;

10th—the registration of deaths, and the making and recording observations and facts important for the public health and interest ;

11th—the imposition of penalties on persons convicted of the breach of any rule made under section twenty-five, and declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and the manner in which the investigation shall be conducted : provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days.

28. Breaches of any rule made under section twenty-five shall be triable by the Cantonment Magistrate when there is such an officer : but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

There shall be no appeal in any case tried under this section ; but every person trying any such case shall, for the purposes of Chapter XXII. of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session, and the Magistrate of the District.

29. In every case in which an offender is sentenced to a fine for the breach of any rule made under section twenty-five, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

If no such property sufficient for the payment of the fine can be found, the offender shall be liable to simple imprisonment for any term which may extend to one month.

30. Nothing in this Act, nor in any rule made under section twenty-five, shall prevent any person from being prosecuted under any other enactment for any offence punishable under this Act, or from being liable under any other enactment to any other or higher penalty than is provided for such offence by this Act : Provided that no person shall be punished twice for the same offence.

31. Whenever it appears necessary for the protection of the health of the troops in any cantonment, the Governor-General in Council may extend to any place outside the limits of such cantonment, and in the vicinity thereof, all or any of the rules made for such cantonment for inspecting and controlling brothels and preventing the spread of venereal disease and make any additional rules consistent with this Act for providing for the same matters, and may define the limits around such cantonment within which such rules or additional rules shall be in force.

32. When such rules, with any additional rules made as aforesaid,

Penalties for breach of rules in extended limits. are extended under section thirty-one to any place outside the limits of such cantonment, the Governor-General in Council may provide, in the manner described in clause eleven of section twenty-seven, for the imposition of penalties for the breach of such rules and for prescribing the manner in which, and the persons by whom, breaches of such rules shall be inquired into or be cognizable.

33. Whenever, in any cantonment, rules have been made under

Effect of cantonment-rules on enactments previously in force. section twenty-five, so much of any enactment as may be held to empower the commanding-officer to make local regulations regarding matters other than military shall cease to have any effect in such cantonment, and all local regulations for any cantonment which may have been made before the promulgation of the rules for such cantonment made under section twenty-five shall cease to have any effect.

34. Nothing in the foregoing sections shall be deemed to affect the

Saving of jurisdiction of Courts-martial, &c. jurisdiction or military authority of Courts-martial or of commanding-officers of cantonments or of regiments, corps, or detachments under any Articles of War, or the provisions of any Statute for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies; and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences.

Provided that, when a Cantonment Magistrate or other officer not being the commanding-officer has been invested by the Local Government with power within the limits of any cantonment to dispose of cases under any rule made under section twenty-five, the commanding-officer shall not exercise the powers described in clause (c) of Part III. of the Indian Articles of War in respect of any case arising under such rule when such rules have been passed for such cantonment under section twenty-five and penalties have been laid down for their infringement.

The said rules shall be held to be the rules mentioned in the said last-mentioned clause, and so much of the same clause as declares the penalties which may be inflicted for breach of cantonment-regulations shall cease from that time to have any effect in such cantonment.

35. The Local Government may from time to time prescribe rules

Power to prescribe rules as to expenditure of funds raised under Act XX. of 1856. for regulating the expenditure, for the general purposes of this Act, of any funds raised under the said Act No. XX. of 1856. Such funds may be expended for the purpose of carrying out any measures under any of the rules made under section twenty-five or section thirty-one of this Act, in addition to or in lieu of the purposes described in section thirty-six of the said Act No. XX. of 1856.

ACT NO. VIII. OF 1881.

THE PETROLEUM ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 5TH FEBRUARY 1881.

An Act to regulate the importation, possession, and transport of Petroleum and other fluids of a like nature.

Preamble. WHEREAS it is expedient to regulate the importation, possession, and transport of petroleum and other fluids of a like nature ; It is hereby enacted as follows :—
Preliminary.

Short title. 1. This Act may be called “ The Petroleum Act, 1881 ;”

Commencement. and it shall come into force on the first day of July, 1881.

Local extent. The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III. of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places, within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

Interpretation-clause. 3. In this Act, unless there is something repugnant in the subject or context,—

“ petroleum ” includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosene, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine, and any inflammable liquid that is made from petroleum, coal, schist, shale, peat, or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the schedule hereto annexed :

“ dangerous petroleum ” means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer :

“ import ” means to bring into British India by sea or land :

and “ importation ” means the bringing into British India as aforesaid :

“ transport ” means to remove from one place to another within British India.

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Dangerous petroleum in quantities exceeding 40 gallons.

Every application for such a license shall be in writing, and shall declare—

(a) the quantity of such petroleum which it is desired to import, transport, or possess, as the case may be;

(b) the purpose for which the applicant believes that such petroleum will be used; and

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport, or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Dangerous petroleum in quantities not exceeding 40 gallons.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped.

Vessels containing dangerous petroleum to be marked.

6. All dangerous petroleum—

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

Power to make rules as to the importation of petroleum.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

(a) for ascertaining the quantity and description of any petroleum on board a ship;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(c) to determine the ports at which only petroleum may be imported; and
 (d) to regulate the time and mode of, and the precautions to be taken, on landing or transshipping any petroleum.

In this section—

“Ship:” “ship” includes anything made for the conveyance by water of human beings or property;
 “master” includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.
 “Master.”

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit;

in the case of both such licenses—

(e) the authority by which the license may be granted;

(f) the fee to be charged for it;

(g) the quantity of petroleum it is to cover;

(h) the conditions which may be inserted in it;

(i) the time during which it is to continue in force; and

(j) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer, informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the

schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

12. On any such testing, if it appears to the officer or other person

Certificate as to result of such testing. so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

13. Any person who, in contravention of this Act or of any rules

Penalty for illegal importation, &c., of petroleum. made hereunder, imports, possesses, or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for keeping, transporting, selling, or exposing for sale, petroleum in contravention of section 6.

14. Any person keeping, transporting, selling, or exposing for sale, petroleum in vessels not marked or labelled as prescribed by section six, shall be punished with fine which may extend to fifty rupees.

15. Any dealer in petroleum who refuses or neglects to show to any

Penalty for refusing to comply with section 10. officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

16. In any case in which an offence under section thirteen or section

Confiscation of petroleum. fourteen has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed, or,

(b) where the offender is importing or transporting, or is in possession of, any petroleum exceeding the quantity (if any) which he is permitted to import, transport, or possess, as the case may be, the whole of the petroleum which he is importing or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of

Jurisdiction. Calcutta, Madras, and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a

Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law :

Provided that no such rule shall be so published without the previous sanction of the Governor-General in Council.

19. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may, by such notification, fix, in substitution for the quantities of petroleum fixed by sections four, five, and eight, the quantities of such fluid to which these sections shall apply.

The Governor-General in Council may, by a like notification, cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus :—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{16}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{1}{4}$ " from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate : It is provided with a spout the mouth of which is $\frac{1}{8}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted, that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below that centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{16}$ " by $\frac{1}{16}$ ", and two smaller ones, $\frac{3}{16}$ " by $\frac{2}{16}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes the oscillating lamp is caught by a pin fixed in the slide and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead, the dimensions of which represent the size of the test-flame to be used.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{3}{4}$ " height; they are soldered to a circular copper plate (20 " W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{3}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}$ ". A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is 1."

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65° , the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66° , the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120° , instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight,

ACT NO. XV. OF 1881.

THE INDIAN FACTORIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1881.

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories ; It is hereby enacted as follows :—

Preamble.

Preliminary.

Short title.

1. This Act may be called "The Indian Factories Act, 1881."

Local extent.

Commencement.

It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing, or otherwise adapting for use, transport, or sale, any article or part of an article ; and

(a) wherein steam, water, or other mechanical power is used in aid of any such process ; and

(b) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process ; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

"child" means a person under the age of twelve years :

"mill-gearing" includes every shaft, whether upright, oblique, or horizontal, and every wheel, drum, pulley, rope, driving strap, or band, by which the motion of the first moving power is communicated to any machine :

a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act

Inspectors and certifying Surgeons.

3. The Local Government may, in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

Inspectors.

In default of such appointment, the Magistrate of the District shall, in virtue of his office, be Inspector of all factories (if any) in the district.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code, and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

Powers of Inspector.

4. An Inspector of factories may, within the local limits for which he is appointed,

(a) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein ;

(b) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act :

(c) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years ; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

5. The Civil Surgeon or such other person practising medicine or

Certifying surgeons.

surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon), shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person, and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Children.

Age of employment.

6. No child shall be employed in any factory, if he is under the age of seven years.

Hours of employment for children.

7. No child shall be actually employed in any factory more than nine hours in any one day.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the district in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel, or other mechanical power, as the case may be.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

12. (a) Every fly-wheel directly connected with a steam-engine or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(b) every hoist or teagle near which any person is liable to pass or be employed, and

(c) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (c) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury, whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule direct.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice, containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

- (a) employs any child in any factory ;
 - (b) neglects to set up or maintain the notice required by section seven, or to fix the days referred to in section eight ;
 - (c) allows any child to perform the work forbidden by, or to work in contravention of, section ten ;
 - (d) neglects to keep a register in manner prescribed under section eleven ;
 - (e) neglects to fence any machinery or mill-gearing in any factory ;
 - or
 - (f) neglects to give any notice,
- shall be punished with fine which may extend to two hundred rupees :

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector ; and

2nd, no person shall be liable under this section to more than one

penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the

Certifying surgeon's declaration in writing.

age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act ; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent ; and the person committing such breach shall be liable therefor.

Miscellaneous.

Power to make rules.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

- (a) the fencing of machinery and mill-gearing in factories ;
- (b) the inspection of factories ;
- (c) the manner in which appeals under this Act shall be presented and heard ; and
- (d) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

19. This Act shall apply to factories belonging to the Crown ; provided that, in case of any public emergency, the Governor-General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor-General in Council or the Local Government, as the case may be, thinks fit.

Crown factories.

ACT NO. XVI. OF 1881.

THE OBSTRUCTIONS IN FAIRWAYS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded, or abandoned, or any fishing-stake, timber, or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(a) cause such thing or any part thereof to be removed; or,

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If, after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for

Proceeds how applied. expenses and charges as aforesaid, together

with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person there-after establishing his right to the same :

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be

"Vessel" to include deemed to include also every article or thing tackle, cargo, &c. or collection of things being or forming part

of the tackle, equipment, cargo, stores, or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

8. The Governor-General in Council may, from time to time, by

Power to make rules to regulate and prohibit the placing of obstructions in fairways. notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing

of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

9. Whoever is guilty of any act or omission in contravention of

Penalty for breach of the rules made under section eight may be such rules. tried for such offence in any district or presi-

dency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

10. Whenever the maintenance or creation of an obstruction in

any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation

is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation, or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed,

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor-General in Council or a Local Government, previous to the passing of

this Act, such removal, destruction, regulation, or prohibition shall be deemed to have been effected under this Act.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers

Saving of other powers possessed by Government.

possessed by it in this behalf.

ACT I. OF 1882.

THE INLAND EMIGRATION ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 6TH JANUARY 1882.

An Act to amend the law relating to Emigration to the Labour-districts of Bengal and Assam.

WHEREAS it is expedient to amend the law relating to the emigration of natives of India to the districts of Chittagong, the Chittagong Hill Tracts, Lakhimpúr, Sibságar, Naugong, Darrang, Kamrup, Goálpára, Khásí Hills, Káchár, and Silhat ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Inland Emigration Act, 1882."

It extends to the territories respectively administered by the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioners of Oudh and Assam :

Local extent.

Commencement.

And it shall come into force at once.

2. Bengal Act No. VII. of 1873 (*to amend the law relating to the*

emigration of labourers to the districts of Assam, Káchár and Silhat and to regulate contract-labour and service), Bengal Act No. II. of 1878 (*to extend the provisions of Bengal Act VII. of 1873 to the district of Chittagong and to the Chittagong Hill Tracts*), and Regulation No. IV. of 1877 (*a Regulation for extending to the Chief Commissionership of Assam, Chapter 13 of Bengal Act VII. of 1873*), are hereby repealed.

Repeal of enactments.

All contracts entered into, rules and appointments made, orders and notifications published, and licenses granted under the said Bengal Act No. VII. of 1873, or any of the Acts thereby repealed, and now in force, shall be deemed to have been respectively entered into, made, published, and granted under this Act.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Labour-districts" :

The expression "the labour-districts" means the districts of Chittagong, the Chittagong Hill Tracts, Lakhimpúr, Sibságar, Naugong, Darrang, Kamrup, Goálpára, Khásí Hills, Káchár, and Silhat ; and the expression "a labour-district" means any one of such districts :

"Magistrate" means a Magistrate of a district, Sub-divisional

"Magistrate" :

Magistrate, and any other person appointed, by name or by virtue of his office, by the Local

Government to perform the functions of a Magistrate under this Act :

"Superintendent," "Registering Officer," "Inspector" and "Assistant Inspector," mean respectively a Superintendent of Emigration, a Registering Officer, an Inspector of Labourers, and an Assistant Inspector of Labourers appointed under this Act:

"Contractor," "sub-contractor," "recruiter," and "local agent," mean respectively a contractor, a sub-contractor, a recruiter, and a local agent licensed under this Act:

"Labour-contract" means a contract entered into in accordance with the provisions of this Act to labour for hire in a labour-district, otherwise than as a domestic servant:

"Labourer" means any person bound by a contract under the provisions of the said Bengal Act No. VII. of 1873 or by a labour-contract under the provisions of this Act. And it also includes any person registered under section thirty-two or section sixty-six as a labourer:

"Estate" means the land upon which any labourers or more than fifty other persons have been engaged to labour:

"Employer" means the chief person for the time being in charge of any estate upon which labourers or more than fifty other persons are employed:

"Emigrate" denotes the departure of any native of India of the age of sixteen years or upwards (other than a native of a labour-district) from any part of the territories administered by the Lieutenant-Governor of Bengal, not being a labour-district, or from the territories respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, for the purpose of labouring for hire in a labour-district otherwise than as a domestic servant:

"Dependent" means any woman (not being a labourer), any child, and any aged or incapacitated relative or friend accompanying any labourer with the consent of a contractor, sub-contractor, recruiter, local agent, or garden-sardár:

"Vessel" includes anything made for the conveyance by water of human beings or property:

"Master" means the person for the time being in charge of a vessel:

"Writing" and "written" include "printing" and "lithography."

And all words defined in the Indian Contract Act, 1872, and used in this Act, shall have the meanings respectively assigned to them by that Act.

Words to be understood as defined in Contract Act.

4. The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, declare that any labour-district within the territories administered by such Government shall, from a day specified in such notification, cease to be subject to all the provisions or any specified provision of this Act; and from such day such labour-district shall cease to be subject to the provisions of this Act or to the provision so specified, as the case may be.

5. The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, prohibit, from a day specified in such notification, all natives of India, or any specified class of such natives, from emigrating from the whole or any specified part of the territories under its administration, to any labour-district or to any specified portion of any such district.

The Local Government may, with the like sanction, in like manner vary or cancel any such notification.

6. The publication of a notification under section four or section five shall not affect any act done, offence committed, or proceedings commenced before such publication.

7. Save as provided by section five, nothing in this Act shall be deemed to prohibit any native of India from emigrating to, or entering into a contract to labour in, a labour-district otherwise than under the provisions of this Act.

8. The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Superintendents of Emigration, Registering Officers, Embarkation Agents, Debarkation Agents, Inspectors of Labourers, Assistant Inspectors of Labourers, and Medical Inspectors under this Act respectively, and, with respect to any such officer, may, subject to the control of the Governor-General in Council, declare the local area situate in the territories subject to its administration within which he shall exercise the powers and perform the duties conferred and imposed upon him by this Act or any rule made hereunder.

The Local Government may suspend or remove any persons whom it so appoints.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

CHAPTER II.

LABOUR-CONTRACTS GENERALLY.

9. Every labour-contract shall be in writing, and shall be executed in duplicate on substantial paper. Every such contract shall specify—

(a) the names of the labourer and his employer;

- (b) the term for which the labourer is to labour ;
- (c) his monthly wages in money and the price at which rice is to be supplied to him ;
- (d) the labour-district in which, and, if the labourer so request, the estate on which, he is to labour.

Every such contract shall be in the form prescribed in the schedule hereto annexed.

No such contract shall be made for a term exceeding five years, commencing from the date of its execution ; or shall stipulate for a less rate of monthly wages for a completed daily task regulated in accordance with the provisions of this Act than five rupees in the case of a man and four rupees in the case of a woman for the first three years of the term of the contract, or six rupees in the case of a man and five rupees in the case of a woman for the fourth and fifth years of such term.

No contract made in contravention of, or not in accordance with, the provisions of this section, shall be enforceable under this Act as a labour-contract against the labourer entering into it.

10. Unless the labour-contract specifies the particular estate on

<p>If contract does not specify estate, labourer to be deemed to have contracted to labour on any estate in charge of employer and situate in labour-district.</p>	<p>which the labourer is to labour, the labourer shall be deemed to have contracted to labour on any estate in charge of the employer for whom he has contracted to labour, and situate in the labour-district specified in the contract :</p>
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Provided that no labourer shall, without his own consent, be separated from his dependents (if any) or from any other labourer who is the wife, husband, son, or daughter of such labourer.

11. Notwithstanding anything to the contrary in the Indian Contract Act, 1872, it shall be lawful for any person

<p>Persons of sixteen years of age may contract to emigrate.</p>	<p>of the age of sixteen years or upwards to enter into a labour-contract.</p>
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CHAPTER III.

RECRUITING BY CONTRACTORS, SUB-CONTRACTORS, AND RECRUITERS.

A.—Contractors and Sub-contractors.

12. Any Superintendent specially empowered in this behalf by

<p>Superintendent may license contractors.</p>	<p>the Local Government may grant to such persons as he thinks fit licenses to be contractors within the whole or any part of the local area for which such Superintendent has been appointed. He may also, on the application of any</p>
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<p>Superintendent may license sub-contractors.</p>	<p>contractor, grant to such persons as he thinks fit licenses to be sub-contractors on behalf of such contractor, within the whole or any part of the local area for which such contractor is licensed.</p>
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13. Every license to a contractor or sub-contractor shall be in such

<p>Form of, and fee for, contractor's and sub-contractor's licenses.</p>	<p>form, and subject to the payment of such fee, not exceeding, in the case of a contractor, one hundred rupees, and in the case of a sub-contractor, fifty rupees, as the Local Government may by rule prescribe.</p>
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14. No such license shall be granted for a longer period than one

Period for which contrac-
tor's and sub-contractor's
license to remain in force.

year from the date thereof, and, if the licensee fails to comply with any of the provisions of this Act or the rules made hereunder, or is guilty of any other misconduct, any such license may at any time be cancelled by the Superintendent who granted the same.

A contractor or sub-contractor may, within one month from the

Appeal against order can-
celling license.

date of any order of a Superintendent cancelling his license, appeal against such order to the Local Government.

The order of the Local Government on such appeal shall be final.

15. Every contractor, in addition to the special duties herein

Duties of contractors.

assigned to him, shall afford such information to the Superintendent and furnish him with such returns and reports as he may, subject to any rules which may be framed by the Local Government in this behalf, require.

Sub-contractor may be
licensed to represent more
than one contractor.

16. A sub-contractor may be licensed to act on behalf of more than one contractor :

Provided that he obtains a separate license in the case of each contractor for whom he desires to act.

17. A contractor

Contractor or sub-con-
tractor may act as recruit-
er.

or sub-contractor may act as a recruiter, and shall, when so acting, be subject to all the provisions hereinafter contained relating to recruiters.

18. Every contractor shall be liable for the acts and defaults as a

Liability of contractors
for sub-contractors' and re-
cruiters' acts and defaults.

sub-contractor or recruiter of any person licensed to be a sub-contractor or recruiter on his behalf, and shall be bound to make good all payments which, under this Act or any rule made hereunder, any such person is ordered to make.

The Superintendent may cancel the license of any contractor whenever the license of any person so licensed on his behalf is liable to be cancelled under this Act.

Nothing in this section shall be deemed to render a contractor criminally liable for any act or default on the part of any person licensed to be a sub-contractor or recruiter on his behalf.

19. Every contractor shall establish and maintain, at such places

Contractor to establish
depôts.

as the Local Government may direct, suitable depôts for the reception and lodging, previous to their despatch to the labour-districts, of labourers engaged by him or by sub-contractors or recruiters licensed to act on his behalf, and shall provide at his own expense all necessary food, clothing, and medical treatment for such labourers during their stay at such depôts.

20. No such depôt shall be used for the reception and lodging of

Inspection and supervi-
sion of depôts.

labourers until it has been inspected and approved of by the Superintendent and the Medical Inspector. Every such depôt shall be under the supervision of the Superintendent, the Magistrate of the district, or such officer as

the Local Government may appoint in this behalf, and shall be open at all times to inspection by the Superintendent, the Magistrate of the district or such officer, and by the Medical Inspector.

Whenever the Superintendent considers that any such depôt is unhealthy, or has become unsuitable for the purpose for which it was established, he may, by order in writing, prohibit the using of such depôt for the reception and lodging of labourers.

21. In addition to the depôts hereinbefore provided for, the Local Government may establish a separate hospital-depôt for the reception of labourers suffering from any dangerously infectious or contagious disease.

22. Whenever any such hospital-depôt is established by any Local Government such Government may require any contractor having a depôt in the neighbourhood of such hospital-depôt to contribute to the expense of the establishment and maintenance of such hospital-depôt such reasonable sum as it may direct. Such sum may be recovered as an arrear of land-revenue due from any contractor so required.

Every hospital-depôt so established shall be under the charge of a Medical Officer appointed by the Local Government. Any Medical Inspector may direct the transfer of any labourer from a depôt established within the local limits of his jurisdiction to a hospital-depôt established within such local limits.

B.—Recruiters.

23. Any Superintendent empowered in this behalf by the Local Government may, on the application of any contractor or of any sub-contractor acting on behalf of a contractor, grant to such persons as he thinks fit licenses to be recruiters on behalf of such contractor within the whole or any specified part of the local area for which such contractor has been licensed.

24. Every license to a recruiter shall be in such form and subject to the payment of such fee, not exceeding sixteen rupees, as the Local Government may by rule prescribe.

25. No such license shall be granted for a longer period than one year from the date thereof; and if the licensee fails to comply with any of the provisions of this Act or the rules made hereunder, or is guilty of any other misconduct, any such license may be cancelled by the Superintendent who granted the same.

26. Every recruiter shall hold a certificate in writing, authorizing him to act as such, and signed by the contractor or sub-contractor on whose application he was licensed.

27. No recruiter shall, in any local area, engage or attempt to engage any person as a labourer unless such recruiter's license bears the countersignature of a Magistrate having jurisdiction throughout such local area.

No such Magistrate shall countersign a recruiter's license unless and until he has satisfied himself by such enquiry as he thinks fit that the licensee is not, by character or from any other cause, unfitted to be a recruiter under this Act, that he holds the certificate mentioned in section twenty-six, and that sufficient and proper accommodation has been provided in a suitable place, and is available for such labourers, or persons intending to become labourers, as may be collected by such recruiter pending their removal to a dépôt.

28. Every Magistrate shall have, for the supervision, inspection, and regulation of the place situate within the local limits of his jurisdiction where such accommodation is provided, the same powers as are by this Act conferred on the Superintendent in respect of dépôts.

Any Magistrate of a district or division of a district may authorize any Magistrate subordinate to him, or any officer of police above the rank of sub-inspector, to visit and inspect such place at any time; and all recruiters or other persons in charge of such place shall afford to subordinate Magistrates and officers of police so authorized every facility for making such visits and inspections.

29. If any Magistrate who has countersigned a recruiter's license afterwards finds reason to think that the licensee is by character or from any other cause unfitted to be a recruiter under this Act, or that the accommodation provided under section twenty-seven has become insufficient or improper or has ceased to be available, or that the place in which it is provided has become unsuitable, he may require the licensee to produce his license and may cancel his countersignature thereon, or he may impound the license and send it for cancellation to the Superintendent who granted the same.

Every Magistrate refusing to countersign a recruiter's license or cancelling his countersignature thereon shall at once report such refusal or cancellation and the grounds thereof to the Superintendent who granted such license.

Magistrate may cancel countersignature in certain cases.
Notice to Superintendent of refusal to countersign or cancellation.

C.—Procedure before Arrival at Dépôt.

30. Every recruiter who desires to engage any person as a labourer shall appear with such person before such Medical Officer as the Local Government may appoint to examine such persons within the local limits of the jurisdiction of the Magistrate by whom such recruiter's license was countersigned, or, if no such officer has been appointed, before such Medical Officer as the Registering Officer, before whom such person is taken for registration as hereinafter provided, may direct.

The Medical Officer shall thereupon examine such person, and shall, if satisfied that he is in a fit state of health, and able in point of physical condition to proceed to the labour-district in which he intends to labour, give him a certificate to that effect.

31. Every person who obtains a certificate under section thirty,

If certified to be fit, intending labourer to be brought before Registering Officer.

together with any persons about to proceed to a labour-district as his dependents, shall thereupon be brought by the recruiter before the Registering Officer having jurisdiction within

the local area for which such recruiter is licensed. The recruiter shall at the same time produce and show his license to such Registering Officer.

32. The Registering Officer shall thereupon inspect the certificate

Intending labourer to be examined by Registering Officer.

given under section thirty, and the license of the recruiter, and, if he finds that such certificate has been duly given, and that the re-

cruter is duly licensed, shall then examine such person, with reference to his intended labour-contract, and explain the same to him.

If it appears that such person is competent to enter into such con-

tract, and understands the same as regards the registered,

locality, period, and nature of the service, and

the rate of wages and the price at which rice is to be supplied to him, that the terms thereof are in accordance with law, that he has not been induced to agree to enter thereinto by any coercion, undue influence, fraud, misrepresentation, or mistake, and that he is willing to fulfil the same, the Registering Officer shall register in a book to be kept for the purpose such particulars regarding him and the persons (if any) whom he wishes to have registered as his dependents as the Local Government may by rule prescribe; and the labourer and his dependents (if any) shall thereupon be deemed to be registered under this Act.

33. The Registering Officer shall furnish to the person so registered

Copy of registration to be given to labourer.

a certified copy of such particulars written on substantial paper.

34. Every officer registering any person under section thirty-two

Copy of registration and medical certificate to be sent to Superintendent.

shall forthwith forward a certified copy of such particulars and the original certificate of the Medical Officer regarding him to the Superin-

tendent having jurisdiction over the depôt to which such person is to proceed.

35. For every such person produced before a Registering Officer for

Fee for registration.

the purpose of being registered as a labourer the recruiter shall pay to the officer such fee,

not exceeding one rupee, as the Local Government may by rule direct.

36. No recruiter shall remove or attempt to remove any person to

Recruiter when to remove person to depôt.

a depôt, or induce or attempt to induce him to go to a depôt, or to leave the local limits of the

jurisdiction of the Registering Officer before whom such person ought to be brought under section thirty-one, or aid or attempt to aid him in going to a depôt, or leaving any such local limits, unless and until such person has been registered under section thirty-two.

37. Every labourer shall, after he has been registered under sec-

Conveyance of labourer to depôt.

tion thirty-two, be conveyed with all convenient despatch by the recruiter by whom he has

been engaged to the depôt established by the contractor on whose behalf such recruiter has been licensed.

All labourers shall, while proceeding to the depôt, be accompanied

Recruiter to accompany labourer or depute person approved by Registering Officer.

throughout the journey either by the recruiter himself, or by a competent person deputed by him with the approval of the Registering Officer by whome such labourers have been registered.

The Registering Officer shall give to the person so deputed a certificate under his signature, stating that he has been deputed for the journey to the depôt.

38. Every recruiter or person deputed by him as aforesaid shall

Recruiter must provide food and lodging for labourer on journey.

throughout the journey to the depôt, provide such labourer and his dependents (if any) with proper and sufficient food and lodging.

D.—Procedure at Contractors' Depôts.

39. Within twenty-four hours after a labourer arrives at a depôt,

Contractor to report arrival of labourer.

the contractor by whom such depôt is maintained, or the person in charge thereof, shall give to the Superintendent, within the local limits of whose jurisdiction such depôt is situate, a notice in writing of such arrival, which notice shall be in such form, and shall contain such particulars, as the Local Government may by rule prescribe.

40. The Medical Inspector shall, as soon as may be after the labourer

Duties of Medical Inspector.

arrives at the depôt, examine such labourer and his dependents (if any) to ascertain that they are in a fit state of health to undertake the journey to the labour-district to which they intend to proceed.

The Medical Inspector shall give a certificate to the Superintendent stating whether he is or is not satisfied of the fitness of the labourer and his dependents (if any) to undertake such journey.

41. If the Medical Inspector gives a certificate of fitness under

If certificate of fitness granted, labourer to enter into labour-contract.

section forty with respect to any labourer, and in the opinion of the Superintendent there is no valid reason why such labourer should not enter into a labour-contract, such labourer and the employer with whom he intends to contract, or the agent of such employer, shall, within thirty days after the arrival of the labourer at the depôt, execute a labour-contract in the presence of the Superintendent.

42. Before the labourer executes such contract, the Superintendent

Contract to be explained to labourer by Superintendent.

shall personally explain it to him, and shall, after the same has been executed by such labourer, and his employer, or the agent of such employer, attest such contract, and certify at the foot thereof that he has personally explained the same to the labourer.

An abstract of every such contract shall be entered in a register

Abstract to be made of contract, and copies of contract given to labourer and employer.

to be kept by the Superintendent for the purpose; and after such abstract has been so entered, one copy of the contract shall be given to the labourer, and the other to his employer or his employer's agent.

Power to cancel contract and order payment of expenses home of labourer in certain cases.

43. In the following cases (namely) :—

(a) where the Medical Inspector, on making the examination required by section forty, or at any subsequent time during the stay at the depôt of any labourer, finds that such labourer is or has become unfit to undertake the journey to the labour-district to which he intends to proceed, and the Superintendent considers that such labourer has not dishonestly represented himself as fit to undertake such journey, or

(b) where the Superintendent finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any such labourer as makes it just to refuse to permit a labour-contract to be executed, or to rescind such contract if executed, or

(c) where the contractor on whose behalf or by whom the labourer has been registered does not, within thirty days after the arrival of such labourer at the depôt, tender to him a labour-contract for execution under section forty-one, or the employer or his agent refuses or neglects to execute such contract as required by that section,

the Superintendent may cancel the labour-contract executed by such labourer, and in that case, or if no labour-contract has been executed, may order the contractor at once to pay such labourer such reasonable sum as is necessary to enable him to return to the place at which he was registered, and such further sum by way of compensation as the Superintendent thinks reasonable; and may take any other steps he thinks necessary for the conveyance of such labourer to such place.

44. Any labourer who from his state of health is, in the opinion of

Labourer when to be lodged, &c., at depôt till he can return home.

the Medical Inspector, unfit to undertake such return-journey, shall be entitled to be fed, lodged, clothed, and (if necessary) medically treated at the depôt at the expense of the contractor by whom such depôt is maintained, until he is reported by the Medical Inspector to be fit to undertake such return-journey.

If such contractor negligently or wilfully omits to provide food,

Contractor omitting to provide food, &c., for labourer.

lodging, clothing, or medical treatment for such labourer, the Superintendent may order the contractor at once to pay such reasonable sum as is necessary to provide such food, lodging, clothing, or medical treatment.

45. When an order is made under section forty-three with reference

Like provisions in case of dependents and relatives. to any labourer, any person registered as his dependent, or any labourer being the wife, husband, son, or daughter of such labourer, may claim—

(a) to be conveyed at the expense of the contractor with such labourer to the place at which he was registered, and

(b) if such labourer is unable to travel, to be fed, lodged, clothed, and (if necessary) medically treated in the depôt at the expense of the contractor until such labourer is able to travel; and the Superintendent may include such expenses in an order made under section forty-three or section forty-four with respect to such labourer.

46. If, upon the arrival of any labourer at a depôt, it appears that during the journey to the depôt such labourer or any person registered as his dependent has suffered any ill-treatment at the hands of the recruiter or person deputed by him to accompany such labourer, or that such recruiter or such person has failed to provide the labourer or any person registered as his dependent with proper and sufficient food and lodging, the Superintendent may order the contractor by whom such depôt is maintained to pay such labourer a reasonable sum by way of compensation.

47. If the Medical Inspector has reason to think that any person registered as the dependent of a labourer is not in a fit state of health to undertake the journey to the labour-district to which the labourer whose dependent he is intends to proceed, the Medical Inspector shall so certify to the Superintendent to whom notice of the arrival of such labourer was given. The provisions of sections forty-three and forty-four shall thereupon apply to such dependent as if he were a labourer, and the Superintendent may make such orders regarding him as he may make under those sections with regard to a labourer.

48. The labourer to whom such dependent is attached shall thereupon be entitled, if he or she so wishes, and if he or she be the husband, wife, son, or daughter of such dependent, to receive from the contractor at whose depôt he or she arrived such reasonable sum as is necessary to enable him or her to return to the place where he or she was registered. If such labourer so return, then any other persons registered as his or her dependents, and any other labourer being the wife, husband, son, or daughter of such labourer, shall also be entitled to receive a like sum from such contractor.

49. On failure of the contractor for twenty-four hours to comply with an order of the Superintendent to pay any sum ordered to be paid under section forty-three, section forty-four, section forty-five, section forty-six, section forty-seven, or section forty-eight, the Superintendent may pay the same to or on behalf of the labourer or dependent.

Every sum so paid shall be recoverable from the contractor with interest thereon at the rate of twelve per cent. per annum from the date of payment.

No further proof shall be required by any Court in any such case than that the Superintendent gave the contractor an order to pay such sum, and that the contractor for twenty-four hours failed to comply with such order.

50. All labourers despatched from a contractor's depôt to a labour-district shall, during their journey, be accompanied by a person appointed by such contractor. Such person shall take with him a way-bill in such form and containing such particulars and instructions as the Local Government may prescribe.

He shall also present such way-bill at all such places and to all such officers as may be thereupon indicated, and shall carry out all instructions contained therein for his guidance.

CHAPTER IV.

RECRUITING BY GARDEN-SARDÁRS AND LOCAL AGENTS.

A.—Garden-sardárs.

51. Any employer may grant to any person a certificate authorizing him, within such local area as may be specified in such certificate, to enter into labour-contracts with persons desirous of becoming labourers upon any estate of which such employer is in charge.

Every person to whom such certificate has been granted is hereinafter called a garden-sardár.

If any labourer is granted a certificate under this section, his employment as a garden-sardár shall be deemed to be employment under his labour-contract.

52. Every such certificate shall be in such form and shall contain such particulars as the Local Government of the territories in which it is granted may prescribe in this behalf.

Any employer granting a certificate to a garden-sardár may, before such certificate is accepted and signed as hereinafter provided, specify therein the name of the local agent (if any) to whom such garden-sardár is to report himself for orders, and the time within which he is to return to such employer, and any other instructions for his conduct that he may think proper.

53. Every such certificate shall be accepted and signed by the garden-sardár in the presence of the Inspector or a Magistrate having jurisdiction over the place where the employer granting such certificate resides.

54. Such Inspector or Magistrate shall inquire into the facts stated in such certificate; and upon being satisfied of the truth of the statement shall, unless it appears to him that the person so accepting and signing such certificate is by character or from any other cause unfitted to be a garden-sardár, countersign and date such certificate.

55. On the application of the employer by whom any certificate so countersigned has been granted to a garden-sardár, such Inspector or Magistrate may, without requiring the appearance of the garden-sardár, or making the inquiry prescribed by section fifty-four, countersign a fresh certificate to be granted by such employer to such garden-sardár in renewal of any existing certificate.

Every such fresh certificate shall be forwarded by the Inspector

Such fresh certificate to be forwarded to Magistrate of district where garden-sardār is employed, and to be accepted and signed by garden-sardār.

or Magistrate countersigning it to the Magistrate of the district in which the garden-sardār to whom it is granted is employed; and such sardār shall, on receiving notice from such Magistrate, appear before him, and accept and sign such fresh certificate in his presence.

56. No certificate granted to a garden-sardār shall come into force

Certificate when to come into force.

unless and until it has been accepted and signed by the garden-sardār and countersigned by the Inspector or Magistrate, and no such certificate shall continue in force for a longer period than one year from the date of its countersignature.

57. Every garden-sardār shall provide sufficient and proper accom-

Accommodation to be provided by garden-sardār. or persons intending to become labourers, as may be collected by him pending their removal to a labour-district.

The Magistrate of a district or of a division of a district, or a Magistrate subordinate to him, or an officer of police above the rank of sub-inspector authorized by him in this behalf, shall visit and inspect such accommodation; and all garden-sardārs or other persons in charge of such places shall afford to such Magistrate, Subordinate Magistrate, or officer of police every facility for making such visits and inspections.

In every such place the garden-sardār providing the accommodation shall make such sanitary arrangements as the Local Government may prescribe.

58. Whenever a garden-sardār contravenes any of the provisions

Certificate may be cancelled in certain cases.

of this Act or the rules made hereunder, or is guilty of any other misconduct, any Magistrate, Superintendent, or Inspector, within the local limits of whose jurisdiction such garden-sardār is employed, may cancel his certificate.

B.—Local Agents.

59. Any Superintendent authorized in this behalf by the Local

Local agents may be licensed.

Government may, on the application of any employer, grant licenses to persons to be local agents for the purpose of representing such employer within such local area and for such period as such employer may desire: Provided that no contractor shall be licensed as a local agent.

60. A local agent may, within such local area, represent his employer

Powers and duties of local agents.

in all matters connected with the engagement of labourers, and shall furnish such information and make such returns as the Local Government may by rule direct.

61. The Superintendent authorized as aforesaid may, on the applica-

Local agent may represent more than one employer.

tion of any employer other than the employer on whose application a local agent has been licensed, make an order in writing permitting such agent to become the local agent of such additional employer within the local area for which he was licensed. The Superintendent making such order shall forthwith send a copy thereof to the Magistrate of the

district in which such agent resides; and such Magistrate shall, on the agent's application, insert in his license the name of such additional employer.

62. Any Superintendent authorized as aforesaid may, with the consent of all the employers of a local agent, grant a special license to such agent, permitting him to engage, on behalf of any employer specified in such special license, but without the intervention of a garden-sardár, persons to be labourers.

Every agent, when so engaging persons to be labourers, may, if he thinks fit, appear with them for registration before a Registering Officer, and require them, when so registered, to execute a labour-contract, and, in such case, shall, for the purposes of this Act, be deemed to be a garden-sardár.

63. When any garden-sardár to whom a certificate has been granted under this Act by any employer commits any offence punishable under this Act, any local agent of such employer may prosecute the sardár for such offence.

64. The Magistrate of any district within which a local agent acts as such may by order cancel the license of such local agent if the employer so require, or if it is shown to the satisfaction of such Magistrate that such local agent has—

(a) employed any contractor's recruiter to engage on his behalf persons to be labourers; or

(b) permitted persons engaged as labourers by or on behalf of any contractor to use the accommodation provided for the persons engaged as labourers by any garden-sardár under such local agent's control; or

(c) allowed any garden-sardár under his control to transfer persons engaged as labourers by such sardár to contractors or to their recruiters, or to any employer other than the employer by whom such sardár's certificate was granted; or

(d) himself taken over persons engaged as labourers by any garden-sardár with intent to despatch them to any employer other than the employer by whom such sardár's certificate was granted.

An appeal shall lie to the Local Government from any order made under this section, clause (a), (b), (c), or (d). Such appeal must be presented within three months next after the date of the order, and the decision of the Local Government thereon shall be final.

C.—Procedure to be followed by Garden-sardár.

65. Every garden-sardár who desires to engage any person as a labourer shall appear with such person, together with any persons about to proceed to a labour-district as dependents of such person, before the Registering Officer having jurisdiction within the local area specified in the certificate of such sardár.

66. The Registering Officer shall thereupon inspect the certificate of the garden-sardár, and, if he finds that such certificate is in force, shall examine, with refer-

ence to the intended labour-contract, the person whom the sardár so desires to engage, and explain the contract to such person.

If it appears that such person is competent to enter into such contract, and understands the nature of the same, as regards the locality, period, and nature of the service, and the rate of wages and the price at which rice is to be supplied to him, that the terms thereof are in accordance with law, that he has not been induced to agree to enter thereinto by any coercion, undue influence, fraud, misrepresentation, or mistake, and that he is willing to fulfil the same, the Registering Officer shall register in a book to be kept for the purpose such particulars regarding him and his dependents (if any) as the Local Government may by rule prescribe; and the labourer and his dependents (if any) shall thereupon be deemed to be registered under this Act.

67. If it appears to such officer that any such person, or any dependent of such person, is not in a fit state of health to undertake the journey to the labour-district to which he intends to proceed, the officer may, before registering any such person or dependent, if himself a medical man, medically examine such person or dependent, or, if not himself a medical man, send such person or dependent to a medical man for such examination. If upon such examination such person or dependent is declared unfit to undertake the journey to such place, the officer may refuse to register such person or dependent.

68. For every person appearing before a Registering Officer for the purpose of being registered as a labourer, the labourer produced for registration. garden-sardár who appears with him shall pay to the officer such fee not exceeding one rupee as the Local Government may direct.

69. When any person has been registered under section sixty-six as a labourer, he shall, within fifteen days from the day on which he was so registered, execute a labour-contract with the employer with whom he intends to contract. Such contract shall be signed in the presence of the Registering Officer by such person and, on behalf of the employer, by the garden-sardár who appears with such person before such officer. The officer shall satisfy himself that the contract is in accordance with any instructions specified in the certificate of the garden-sardár. If the officer is so satisfied, he shall, before the labourer signs the contract, personally explain it to him, and shall, after the same has been executed as aforesaid, attest such contract, and certify at the foot thereof that he has personally explained the same to the labourer.

An abstract of every such contract shall be entered in a register to be kept for the purpose by the Registering Officer, and, of the two copies of the contract, one shall then be given to the labourer, and the other to the garden-sardár or the local agent.

If any garden-sardár, without reasonable cause, refuses or neglects to execute a contract with a labourer as required by this section within fifteen days from the day on which he was so registered, the Registering Officer may order such sardár to pay to the labourer such reasonable compensation, not exceeding twenty rupees, as such officer thinks fit.

70. If the employer of a garden-sardár has, in the instructions

Procedure when employer requires medical examination previous to registration.

specified in the certificate of the sardár, directed that all labourers engaged by him shall, before registration, be examined by a competent medical man, and certified by him to be in a fit state of health to undertake the journey to, and labour in, the labour-districts to which they intend to proceed, no Registering Officer shall register as a labourer any person appearing before him with such sardár until such certificate from such Medical Officer as aforesaid has been produced and shown to him.

71. If the employer has, in the instructions specified in the certi-

Medical Officer entitled to fee.

cate of the garden-sardár, directed that such examination shall be made by any Medical Officer in the service of Government, such officer making the examination shall be entitled to receive from the local agent or sardár such a fee not exceeding eight annas for each labourer so examined as the Local Government may fix.

72. Unless and until a person engaged as a labourer has been

Garden-sardár when to remove labourer to labour-district.

registered under section sixty-six, no garden-sardár shall remove or attempt to remove him to a labour-district, or induce or attempt to induce him to go to a labour-district, or to leave the local area specified in the certificate of such sardár, or aid or attempt to aid him in proceeding to a labour-district, or in leaving any such local area.

73. A garden-sardár shall either himself accompany labourers

Garden-sardár to accompany labourers or send competent person with them.

engaged by him throughout their journey from the place in which the labour-contract was entered into to the labour-district wherein they have contracted to labour, or shall send with them some competent person appointed by him with the approval of the local agent of his employer; or, if his employer has no local agent, with the approval of the officer by whom such labourers were registered.

When the number of labourers (exclusive of dependents) proceeding on their journey to such labour-district is more than twenty, for every twenty labourers so in excess, or for any number of labourers less than twenty so in excess, one additional garden-sardár or person so appointed by him shall accompany the labourers so proceeding.

74. A garden-sardár may, subject to the instructions specified in

No restriction on number of persons engaged by garden-sardár.

his certificate, engage any number of persons as labourers; and, subject to the provisions of section seventy-three, any number of labourers may be despatched at the same time to the labour-districts.

75. Any garden-sardár may, with the previous consent in writing

In certain cases garden-sardár may be appointed to accompany labourers not engaged by him.

of the local agent of the employer by whom his certificate was granted, or, if such employer has no local agent, with the previous consent in writing of such employer, be appointed under section seventy-three as a competent person to accompany labourers other than those engaged by him.

76. Every garden-sardár or person appointed by him as aforesaid, who accompanies labourers to the labour-districts, shall present to the officer by whom such labourers have been registered, a way-bill in such form and containing such particulars and instructions as the Local Government may prescribe. He shall also present such way-bill at all such places and to all such officers as may be thereupon indicated, and shall carry out all instructions contained therein for his guidance.

77. Every garden-sardár or person appointed by him as aforesaid, who accompanies labourers to the labour-districts, shall provide such labourers and their dependents (if any) with proper and sufficient food and lodging throughout the journey.

78. If it appears to any Magistrate, on the complaint of any such labourer at any place on the journey, that he or any person registered as his dependent has suffered any ill-treatment during the journey at the hands of the garden-sardár or person appointed by him accompanying such labourer, or that such sardár or person has failed to provide such labourer or any of his dependents with proper and sufficient food and lodging, or has wilfully abandoned such labourer or any of his dependents, such Magistrate may either order the sardár or person so appointed to pay to such labourer a reasonable sum by way of compensation, or may cancel the labour-contract entered into by such labourer, and order such sardár or person to pay to such labourer such reasonable sum as is necessary to enable him with his dependents (if any) to return to the place at which he was registered.

79. On failure for twenty-four hours by any garden-sardár or person appointed by him as aforesaid to comply with an order under section seventy-eight to pay any sum, the Magistrate may pay the same to or on behalf of such labourer.

Every sum so paid shall be recoverable from the employer by whom the certificate of such garden-sardár was granted, or from the local agent of such employer, with interest thereon at the rate of twelve per centum per annum from the date of payment.

No further proof shall be required by any Court in any such case than that the Magistrate gave such garden-sardár or person an order to pay such sum, and that such garden-sardár or person for twenty-four hours failed to comply with such order.

80. Any Magistrate or any Embarkation Agent may, if himself a medical man, examine, and, if not himself a medical man, send for examination by a medical man, any labourer or dependent who, while on the journey to the district to which he intends to proceed, appears to such Magistrate or Agent not to be in a fit state of health to proceed thereto.

81. If such labourer or dependent is on such examination declared not to be in a fit state of health to undertake the journey to the labour-district to which he intends to proceed, the Magistrate or Embarka-

Provision for way-bill.

Garden-sardár must provide food and lodging for labourers and dependents on journey.

If such not provided, Magistrate may award compensation or cancel contract.

Procedure on failure of garden-sardar to comply with order.

Medical inspection of labourers en route.

Detention and return of labourer declared, when en route, to be unfit to travel.

tion Agent may order him to be detained at such place as he thinks fit, until the labourer or dependent is in a fit state of health to undertake such journey, when he shall either be forwarded to such district or sent back to the place where he was registered, according as the garden-sardár or person appointed by him accompanying such labourer or dependent, or the employer by whom the certificate of such sardár was granted, or his local agent, may direct.

While any labourer or dependent is so detained, he shall be entitled to be fed, lodged, clothed, and (if necessary) medically treated at the cost of the employer with whom such labourer or the labourer to whom such dependent is attached has contracted to labour.

82. When an order under section eighty-one has been made with

Dependent of labourer reference to any labourer, any person registered
whom to be fed, &c. as his dependent and any labourer being the
wife or husband of such labourer, shall be entitled,

(a) until such labourer is in a fit state of health to undertake such journey, to be fed, lodged, clothed, and (if necessary) medically treated at the place where such labourer is detained, and at the cost of the employer with whom such labourer has contracted to labour, and,

(b) if such labourer is sent back to the place where he was registered, to be sent back to such place.

When any such order has been made with reference to any depend-

Labourer to whom de- ent, the labourer to whom he is attached shall
pendent is attached when thereupon, until such dependent is in a fit state
to be fed, &c. of health to undertake the journey to the
labour-district, be entitled, if the labourer so wishes, and, if he or she
be the husband, wife, son, or daughter of such dependent, to be fed,
lodged, clothed, and (if necessary) medically treated at the place where
such dependent is detained, and at the cost of the employer with whom
such labourer has contracted to labour; and if such dependent is sent
back to the place where he was registered, such labourer shall, if he or
she so wishes, and if he or she be the husband, wife, son, or daughter of
such dependent, be sent back to such place.

If such labourer is entitled and claims to be so fed, lodged, clothed, and (if necessary) medically treated, or to be so sent back, any person registered as his or her dependent, and any other labourer being the wife or husband of such labourer, shall be entitled, as the case may be,

(a) to be fed, lodged, clothed, and (if necessary) medically treated at the place where such dependent is detained, and at the cost of such employer, until such dependent is in a fit state of health to undertake the journey to the labour-district, or

(b) to be sent back to the place where he or she was registered.

83. If the garden-sardár or person appointed by him accompanying

any labourer or dependent fails to provide such
labourer or dependent with food, lodging, cloth-
ing, and medical treatment, or to send him
back as required by section eighty-one or section eighty-two, the Magis-
trate or Embarkation Agent may order such sardár or person to pay
such sum as is necessary to provide such food, lodging, clothing, and
medical treatment, or to defray the cost of the return-journey of such

labourer or dependent, as the case may be, to the place where he was registered; and, on failure for twenty-four hours of such sardár or person to comply with such order, he may pay the sum specified in the order to or on behalf of such labourer or dependent.

The provisions of section seventy-nine shall, *mutatis matandis*, apply to the recovery of sums paid by the Magistrate or Embarkation Agent under this section.

84. If any labourer whose labour-contract has been executed by a garden-sardár on behalf of his employer is brought to Calcutta on his way to the district in which he has contracted to labour, any person empowered to act as the agent or representative of such employer may require such labourer to appear before the Superintendent for the cancellation of such contract. If such reasonable sum as is necessary to enable such labourer and his dependents (if any) to return to the place at which he was registered be paid to such labourer in his presence, the Superintendent may declare the contract cancelled, and in that case shall make an endorsement to that effect on the labourer's copy of the contract, and attest it with his signature.

85. When the Superintendent declares the labour-contract of any labourer to be cancelled, any other labourer who is the wife, husband, father, mother, son, or daughter of such labourer, and who may have entered into a labour-contract at the same place with the same employer, may claim to have her or his labour-contract cancelled at the same time. On such claim being made, the Superintendent shall declare the labour-contract of the claimant to be cancelled, and shall order the agent or representative of the claimant's employer to pay to the claimant such reasonable sum as is necessary to enable him and his dependents (if any) to return to the place at which he was registered.

On failure for twenty-four hours of the agent or representative to comply with such order, the Superintendent may pay the sum specified in the order to or on behalf of the claimant; and the provisions of section seventy-nine shall, *mutatis mutandis*, apply to the recovery of any sum so paid.

CHAPTER V.

TRANSPORT BY RIVER.

A.—Passenger Vessels.

86. Nothing in this chapter shall apply to the transport by sea of natives of India to the labour-districts of Chittagong and the Chittagong Hill Tracts.

87. No master shall receive more than twenty passengers being natives of India on board his vessel for the purpose of transporting them to a labour-district, unless a license to carry passengers in such vessel has been granted to him by an Embarkation Agent duly empowered in that behalf by the Local Government.

The Local Government may, by notification in the official Gazette,

Power to exempt vessels.

exempt from the provisions of this section any vessel or class of vessels.

88. The master or owner of any vessel who desires to obtain a

Application for license.

license under this Act to carry passengers in such vessel shall make a written application for

a license to an Embarkation Agent empowered as aforesaid.

Every such application shall state such particulars respecting the

Contents of application.

vessel as the Local Government may by rule prescribe.

89. If such Embarkation Agent is of opinion that the vessel is in

Grant of license.

all respects suitable for carrying passengers being natives of India to a labour-district, he shall

give to the master of the vessel a license to carry passengers therein, specifying the number of passengers being natives of India which may be received on board.

90. Such fee, not exceeding sixteen rupees, as the Local Government

Fee for license.

may, with reference to the size of such vessel, by rule direct, shall be paid for every such license.

No such license shall be in force for more than one voyage :

Provided that the Embarkation Agent may, from time to time

Provision for annual li-
censes.

with the previous sanction of the Local Government, grant a license to the master of any

vessel for any term not exceeding one year, on payment of such fee not exceeding one hundred rupees, and on such conditions, as the Local Government may by rule direct.

91. Any Embarkation Agent may, in accordance with such rules as

Embarkation Agent may
limit number to be received
on board on any particular
voyage.

the Local Government may prescribe in this behalf, direct, by order in writing, that, on any particular voyage or part of a voyage, any master licensed hereunder shall not receive on

board his vessel more than a specified number of passengers being natives of India, which number shall be less than the number specified in the license granted to such master.

92. In computing the number of persons on board of any vessel,

Two children under ten to
be counted as one person.

two children under the age of ten years shall, for the purposes of this Act, be reckoned as one person only.

93. Every master to whom a license is granted hereunder shall keep

Master to make returns.

such lists, submit such returns, and make such reports in regard to the passengers carried in

his vessel as the Local Government may by rule prescribe.

94. Every such master shall have on board his vessel carrying

Provisions, clothing, me-
dical and other officers,
cooks, &c.

labourers and their dependents such supplies of provisions and clothing, and such medical and other officers, cooks and attendants, as the Local

Government may by rule prescribe.

95. No Medical Officer shall be appointed to any vessel in respect

Medical Officer to be li-
censed.

of which a license is granted hereunder unless he holds a license granted by such authority as

the Local Government may appoint in that behalf; and any Medical Officer so licensed shall be forthwith removed from his appointment on the requisition of any officer empowered by the Local Government to make such requisition.

B.—Departure of Passenger Vessels and Procedure during Voyage.

96. Whenever it appears to any Embarkation Agent that the departure of any vessel in respect of which a license is granted hereunder is unduly delayed beyond the date fixed by order of a Superintendent or the Local Government, or notified by advertisement in the public press, for such departure, he may order the master of such vessel to proceed on his voyage at once.

97. No master licensed hereunder shall proceed on a voyage with his vessel carrying labourers until he has received from the Embarkation Agent the way-bills relating to all labourers on board. The Embarkation Agent and the master of the vessel shall together personally ascertain that the number of labourers on board corresponds with the number entered in such way-bills.

The Embarkation Agent shall send a copy of such way-bills to the Magistrate of the labour-district to which such labourers are proceeding.

98. No such master shall cause or permit any labourer finally to leave his vessel at any place other than that named in the way-bill as the destination of such labourer:

Provided that this section shall not be deemed to prevent the master of any vessel from permitting such labourers to disembark at any place or places on the voyage so long as such disembarkation is not intended or known to be likely to be final; nor to prevent the final disembarkation of any such labourers, or the transfer of such labourers with their dependents to any other vessel in case of accident or other unavoidable necessity. Such accident or necessity shall be forthwith reported by the master to the Embarkation Agent by whom he was licensed, and to the nearest Magistrate in the district within which such accident has occurred or necessity has arisen.

99. Every master licensed hereunder shall stop his vessel carrying passengers being natives of India at such places, being places where a Magistrate is stationed, and shall, unless the Magistrate permits him to depart earlier, remain at each such place for such time, not exceeding six hours of daylight, as the Local Government may direct. Such master shall, on arriving at any such place, immediately report to the Magistrate the number of the crew and other persons on board, the general state of their health, and the number of deaths (if any) which have occurred among the persons who embarked on board his vessel.

100. A Magistrate may, while any vessel in respect of which a license is granted hereunder is within the local limits of his jurisdiction, go on board such vessel

and inspect the vessel and all persons being natives of India on board.

Master bound to give all information required. The master and officers of such vessel shall afford to such Magistrate every facility for such inspection, and give him all such information as he may reasonably require respecting the labourers or other persons on board, the deaths (if any) which may have occurred on board, and any other facts which may affect the health of the passengers.

101. At any time while any such vessel is within the local limits of his jurisdiction, the Magistrate may regulate the communication between vessel and land. The Magistrate may regulate the communication between such vessel and the land, and may prohibit all persons from leaving such vessel and all persons on land from proceeding on board her.

102. Any Magistrate may, if he has reason to believe that any passengers being natives of India on board any such vessel within the local limits of his jurisdiction are, or are likely to be, affected with any dangerously infectious or contagious disease, detain such vessel, and require the Civil Medical Officer of the district or other qualified Medical Officer to inspect such passengers, and to report on their health, stating whether any or what measures are requisite for the removal or prevention of such disease. After the receipt of such report, the Magistrate may order any such passenger suffering from any such disease to be disembarked and detained for medical treatment. If, in the opinion of the inspecting Medical Officer, it is dangerous to the health of the general body of the passengers to allow such vessel to proceed until measures have been taken to cleanse and disinfect her, the Magistrate may detain the vessel for a further period, not exceeding three days, for the purpose of carrying out such measures.

103. If, on receiving a report of a Medical Officer, it appears to a Magistrate that any labourer or any dependent sick labourers; of any labourer, though not suffering from any such disease as last aforesaid, is not in a fit state of health to proceed to the labour-district in which such labourer has contracted to labour, he may order such labourer or dependent to be detained, and shall cause and shall arrange for their accommodation and treatment. all necessary arrangements to be made for the accommodation, support, and medical treatment of the labourer or dependent so detained.

104. All expenses incurred under section one hundred and three by Expenses how to be recovered. a Magistrate in respect of any labourer or dependent so detained shall be recoverable from the employer of such labourer together with interest at six per centum per annum.

105. Whenever it appears to a Magistrate making an inspection of Measures to be taken if excess number of native passengers is found on board. any vessel in respect of which a license is granted hereunder, that the number of passengers on board being natives of India is larger than the number specified in such license, or than the number specified in an order of an Embarkation Agent made under

section ninety-one, he may remove the excess number, and detain them until another opportunity of forwarding them to their destination is found. The necessary expense of maintaining such passengers while so detained, and of forwarding them to their destination, shall be paid by such Magistrate, and shall be recoverable from the master or owner of such vessel.

106. Whenever, on making an inspection of any vessel in respect of which a license is granted hereunder, a Magistrate finds that any of the provisions of this Act, or of any rule of the Local Government made hereunder, have not been complied with in respect of such vessel, he shall report the same to the Embarkation Agent by whom such license was granted; and, if he considers it necessary to do so, he may detain the vessel until such provisions have been so complied with as to make it possible for the voyage to be further prosecuted with safety and reasonable comfort to the emigrants.

Infraction of the Act and rules to be reported.
Vessel may be detained.
Power to make rules regulating disembarkation and other matters.

107. The Local Government may make rules regulating—

- (a) the disembarkation of labourers and their dependents, and their inspection and accommodation on arrival at their destination :
- (b) the detention of such labourers or dependents at debarkation-depôts :
- (c) the forwarding of labourers to their destination, and the closing and return of way-bills by employers.

All expenses incurred by any Magistrate or Debarkation Agent in accordance with such rules shall be recoverable from the employers of such labourers together with interest at the rate of twelve per centum per annum.

108. The Magistrate of a district, or of a division of a district, may, from time to time, authorize any subordinate Magistrate, Medical Officer, or officer of police above the rank of sub-inspector, to exercise the powers and authorities conferred, and to perform the duties imposed, on a Magistrate under sections ninety-nine to one hundred and six, both inclusive.

Magistrate may depute a subordinate Magistrate to discharge the functions of the Magistrate.

may, from time to time, authorize any subordinate Magistrate, Medical Officer, or officer of police above the rank of sub-inspector, to exercise the powers and authorities conferred, and

to perform the duties imposed, on a Magistrate under sections ninety-nine to one hundred and six, both inclusive.

CHAPTER VI.

PROVISIONS AS TO THE LABOUR-DISTRICTS.

A.—Annual Rate payable by Employers.

109. Every employer shall, on the first day of January and the first day of July in each year, pay, in respect of each labourer then in his employ, such rate, not exceeding an annual sum of one rupee, as the Local Government may, by notification in the official Gazette, direct.

110. If any employer fails, for the space of one month after the receipt of a notice in such form and served in such manner as the Local Government may

Annual rate payable by employer.
Payment of rate how to be enforced.

prescribe, to pay any sum due by him under the provisions of the last preceding section, such sum shall be recoverable as if it were an arrear of land-revenue due from such employer.

B.—Local Labour-contracts.

111. Notwithstanding anything hereinbefore contained, any employer may enter into a labour-contract with any native of India within a labour-district. When any employer has executed any such contract with any such native within a labour-district, he shall, within one month from the date of the execution of such contract, forward it in duplicate to the Inspector within the local limits of whose jurisdiction such employer resides. On receipt of the contract so forwarded, the Inspector shall enter an abstract thereof in a register to be kept by him for the purpose, and shall then give one copy of the contract to the labourer, and the other copy to his employer.

When, for the first time, after the registration of any such contract with a labourer, the Inspector visits the estate on which such labourer is employed, the employer shall cause such labourer to appear before the Inspector, and such labourer may thereupon apply to the Inspector to cancel the contract; and, if he shows cause sufficient in the opinion of the Inspector to justify the cancellation, the Inspector may cancel the contract, and shall thereupon endorse on the labourer's copy of the contract, or if such copy be not forthcoming, shall give to the labourer, a certificate of such cancellation.

112. Any employer desirous of entering into a labour-contract with any native of India in a labour-district may, instead of executing such contract under section one hundred and eleven, appear either in person or by agent with such native before the Inspector or Magistrate within the local limits of whose jurisdiction such employer resides.

Such Inspector or Magistrate shall thereupon explain the labour-contract to such native, and shall, if satisfied that he is competent to enter into and understands the same, call upon him and the employer or his agent to execute it in his presence; and, if they execute it, shall attest such execution with his signature.

An abstract of every such labour-contract shall be entered in a register to be kept by the Inspector or Magistrate for the purpose; and one copy of such contract shall then be given to the labourer, and the other copy to his employer or his agent.

In respect of every labour-contract, an abstract whereof is registered under section one hundred and eleven or under this section, the employer who executes such contract in person or by agent shall pay to the Inspector or Magistrate such fee, not exceeding one rupee, as the Local Government may direct.

C.—Employers' Returns and Magistrates' Inspections.

113. Every employer shall keep such registers of all labourers and

Registers to be kept, and other persons employed on the estate of which he is in charge, in such form, and shall make to the Inspector within the local limits of whose jurisdiction such estate is situate such periodical returns in writing, as the Local Government may by rule prescribe. The Inspector may examine such registers and muster all labourers and other persons employed on any estate within such local limits, and may verify the accuracy of the entries in such registers, or in any prescribed periodical return.

114. Any Inspector or Magistrate, or any person authorized by

Inspector and Magistrate either of them in writing in this behalf, may at any time enter and inspect all lands and lands, &c., used by labourers, houses wholly or partially used by or for labourers, or by or for any other natives of India employed on any estate who are not natives of the labour-district in which such estate is situate, and may require that any labourer or other such native shall be brought before him, and that a copy of the labour-contract of any labourer shall be produced, and may make any inquiries which he thinks proper touching the condition or treatment of any labourer or other such native.

D.—Regulation of Labour.

115. Every employer shall prepare a schedule specifying the daily

Schedule of task-work to task to be executed by each labourer employed on the estate of which such employer is in charge, and may, from time to time, alter any schedule so prepared.

One copy of every such schedule shall be filed in a book which shall be open to the examination of the Inspector, and another copy thereof in the Bengali language shall be stuck up in some conspicuous place accessible to the labourers to whom such schedule relates.

The minimum payment for each daily task shall be the quotient resulting from dividing the monthly wage of the labourer concerned by the whole number of days in the current month.

116. No labourer shall be bound to labour more than six days in one

Limitations and conditions of task-work. week, or more than six consecutive hours, or more than nine hours in any one day. Every labourer shall, for one day in each week, receive wages as for a full task done, without being required to labour for the same. The employer shall, on six days in each week, provide for each labourer work sufficient to enable him to earn at least his minimum daily wage. Failing such due provision of work, the labourer shall, if he can show that he was able and willing to labour for the same, be entitled to claim his minimum daily wage.

117. If the Inspector considers that any schedule of daily tasks, or

Provisions for revision of schedule by Inspector subject to appeal to committee.

any part thereof, is unreasonable, he may, by order in writing, direct that a reduction specified in such order be made of such tasks. The employer shall at once make such reduction,

but may, if dissatisfied with the Inspector's order, by notice in writing require the Inspector to refer the schedule to a committee for consideration. Such committee shall consist—

- (a) of the Inspector,
- (b) of some person to be nominated by the employer whose schedule is to be considered, and
- (c) if practicable, of a Medical Officer.

Where the employer fails to nominate a person within seven days after being thereunto requested in writing by the Inspector, the Inspector, instead of the employer so failing, may nominate a person.

When the committee consists only of the Inspector and of a person nominated by the employer or Inspector, the Inspector shall have the casting vote.

118. If such committee, or a majority thereof, is of opinion that the daily tasks specified in such schedule or any of them are unreasonable, they shall modify and reduce them in such manner as they think fit. The employer shall thereupon alter his schedule accordingly, and copies of the schedule so altered shall be filed and stuck up in the manner directed in section one hundred and fifteen, and shall, as between him and the labourers concerned, take the place of the former schedule.

119. Notwithstanding anything contained in any such schedule, the Inspector may order that any specified labourer, who is in his opinion unable from weakness to earn by his labour the sum of one anna and a half per diem, according to the said schedule, shall receive, in lieu of such actual earnings, subsistence-allowance at the rate of one anna and a half per diem, or diet on a scale to be approved by such Inspector. Such subsistence-allowance shall be recoverable as if it were an arrear of wages.

E.—Incapacity for Labour.

120. The Inspector within the local limits of whose jurisdiction any labourer is employed may release such labourer, for such period as he thinks fit, from performing his labour-contract, if he be, in the judgment of such Inspector, temporarily unfit for the performance thereof by reason of sickness or other sufficient cause.

Every such release shall be endorsed by the Inspector on the labour-contract, and the time during which the release continues shall not be reckoned as part of the term for which the labourer is bound to serve. Every such labourer shall, during such release, receive such subsistence-allowance from his employer as the Inspector thinks sufficient.

121. If any labourer is compelled to absent himself from work on account of sickness, he shall receive from his employer for each day of such absence subsistence-allowance of one anna and a half, or, if in hospital, sick diet on a scale to be approved by the Inspector.

If such absence exceeds the total number of thirty days in any one year, and the employer, as soon as such number is exceeded, gives the

labourer a notice in writing to that effect, each day of absence in excess of such number shall be added to the term of the labour-contract, unless the labourer refunds to the employer the sum of one anna and a half for each day so in excess. The Inspector shall, from time to time, when visiting the estate, endorse on the labourer's labour-contract, after such enquiry as may be necessary, the number of days so added to the term thereof.

122. If, in the opinion of the Inspector, any labourer is permanently

Discharge of labourer incapacitated for the performance of his labour- permanently incapacitated, contract or any material part thereof, the Inspector shall certify to that effect in writing, and deliver such certificate to the employer of such labourer or his agent; and from the date of such certificate the labour-contract of such labourer shall wholly determine. Every labourer whose labour-contract so determines shall be entitled to receive from his employer such sum, not exceeding three months' wages, as the Inspector may award.

Such sum and any subsistence-allowance mentioned in sections one hundred and twenty and one hundred and twenty-one shall be recoverable as if they were arrears of wages.

F.—Accommodation for Labourers.

123. Every employer shall be bound to provide for the labourers

House-accommodation, water-supply, and sanitary arrangements to be provided.

employed on the estate of which he is in charge such house-accommodation, water-supply, and sanitary arrangements as the Local Government may by rule direct.

124. When the food-grain commonly used by any class of labourers

Supply of food-grain by employer.

is not procurable by such labourers at reasonable prices in the local markets near the estate on which such labourers are employed, the employer of such labourers shall be bound to supply them with such grain at a reasonable price. The Local Government may, by notification in the official Gazette, determine, either generally or for each district or part of a district, what shall, for the purposes of this section, be deemed to be a reasonable price.

125. Subject to any rules which may be made by the Local Go-

Provisions for rationing.

vernment in this behalf, any Inspector may, by order in writing,

(a) direct that, on any specified estate within the local limits of his jurisdiction, all the labourers or any specified class of labourers shall be furnished by their employer with rations, cooked or uncooked, on such scale, for such period not exceeding three months from the date of their arrival on the estate, as may be specified in such order;

(b) exempt any specified labourer from the effect of any such general order if he is satisfied that such labourer is able to earn a full wage, and desires to provide himself with proper and sufficient food;

(c) direct that any specified labourer shall be furnished with rations for any term not exceeding six months, and renew any such order for a like term.

The cost of each labourer's ration furnished to him in accordance with any order made under this section shall be calculated at current

rates as determined by the Inspector, and shall be deducted from any wages earned by the labourer during the period for which such order is in force.

126. If any employer does not, in the opinion of the Inspector,

<p>Provision for hospital- accommodation and medical attendance.</p>	<p>provide such hospital-accommodation in a suitable place available to the labourers employed upon the estate of which he is in charge, or does not make such provision for the medical treatment of such labourers, as the Local Government may direct, the Local Government may require such employer to contribute to the support of a central hospital to be established, or to the pay of a Medical Officer to be appointed, for the medical treatment of such labourers, such sum, proportionate to the number of labourers so employed, as it thinks fit.</p>
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127. Any Inspector or Assistant Inspector who is himself a Ma-

<p>Inquiry whether employer has failed to provide accom- modation, &c., as required by the rules.</p>	<p>gistrate may, with respect to any estate situate within the local limits of his jurisdiction, institute an inquiry whether the employer in charge of such estate has provided for his labourers house-accommodation, water-supply, sanitary arrangements, food-grains, and rations in accordance with the rules prescribed by the Local Government. At the instance of any Inspector or Assistant Inspector a similar inquiry may be made by a Magistrate. Every such inquiry shall be held at some place on the estate to which it relates, or within ten miles of such estate, and shall be conducted and dealt with as if it were an inquiry of a Magistrate under the Code of Criminal Procedure.</p>
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G.—Localities unfit for the Residence of Labourers.

128. If in the opinion of the Inspector any estate or portion of an

<p>Inspector to report.</p>	<p>estate situate within the local limits of his jurisdiction is at any time, by reason of climate, situation, or condition, unfit for the residence of labourers, or of any particular class of labourers, he shall give notice in writing of such opinion to the Magistrate of the district; and such Magistrate shall forthwith, by order in writing, summon a Committee to inquire into the matter.</p>
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Such Committee shall consist of the Magistrate, the Inspector, the Medical Officer of the district, and one or more employers of labourers, when such employers are available.

If the Magistrate is unable to procure the service on such Committee of any employer of labourers, he may, with the previous sanction of the Commissioner of the division, appoint one or more persons qualified to serve on such Committee.

129. Such Committee shall, as soon as may be, inquire into the

<p>Proceedings of Committee.</p>	<p>healthiness of the estate or portion to which the order appointing the Committee relates, and shall hear and record such information on the subject as the owner of such estate or portion, or the employer in charge thereof, or the Inspector, may desire to place before it.</p>
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If such Committee, or the majority thereof, is of opinion that such

If Committee finds estate
unfit, labour-contract to be
void as regards such estate.

it shall record a finding to that effect.

When such finding has been recorded, no labourer, or no labourer of the particular class to which such finding relates, as the case may be, shall be bound by any labour-contract to labour on the estate or portion, or part of such estate or portion, as the case may be, which is found unfit for the residence of such labourers.

When any labourer is released under this section from the performance of a labour-contract to labour on any estate, he shall be bound to labour on any other estate belonging to his employer and situate in the same labour-district; or, where the finding relates only to a portion or part of an estate, on any other portion or part of the same estate.

130. Whenever it appears to the Local Government that the number of labourers employed on an estate who have died thereon, or on any portion thereof, during the last preceding twelve months, or that the average annual number of labourers employed on an estate who have died thereon, or on any portion thereof, during the last preceding three years, bears a larger proportion to the whole number of labourers employed thereon during such period of twelve months or three years, as the case may be, than seven per centum, the Local Government may direct the Civil Medical Officer of the district or other qualified Medical Officer to enquire into and report on the following matters:—

Local Government how to
proceed if mortality in past
year exceeds seven per cent.,
or if the average mortality
for three years exceeds seven
per cent.

(a) the cause or causes of such mortality;

(b) the want (if any) of due care or precaution, and of the adoption of proper and available sanitary measures, on the part of the owner of such estate or portion thereof, or the employer in charge of such estate or portion, causing or contributing to such mortality;

(c) the fitness or otherwise of such estate or portion for the residence of labourers.

131. Such Medical Officer shall, as soon as may be, inquire into such matters, and shall hear and record such information relating thereto as the owner of such estate or portion, or the employer in charge of the same, or the Inspector, may place before him, and shall visit and inspect such estate or portion, and shall make a report expressing the reasons for his opinion, and transmit the same to the Local Government together with the information so recorded, and the notes of his inspection of such estate or portion.

Medical Officer to report.

132. If the Local Government, after perusal and consideration of the said report, information, and notes, is of opinion that such mortality was caused by the want, on the part of the owner of such estate or portion, or the employer in charge of the same, of due care or precau-

Local Government may
declare estate unfit for resi-
dence.

tion, or of the adoption of proper and available sanitary measures, and that such estate or portion is thereby rendered unfit for the residence of labourers, it may declare in writing that such estate or portion is unfit for the residence of labourers. Such declaration of the Local Government shall have

Effect of declaration. the same effect as the finding of a Committee under section one hundred and twenty-nine.

133. If at any time it appears to the Inspector that any estate or portion thereof, or any part of such portion, found under section one hundred and twenty-nine, or declared under section one hundred and thirty-two, to be unfit for the residence of labourers, or any particular class of labourers, has become fit for the residence of such labourers or such particular class of labourers, as the case may be, he shall, with the previous sanction of the Magistrate of the district in which such estate, portion, or part is situate, give a certificate to that effect signed by him. Thereupon all labourers who have been released under section one hundred and twenty-nine or section one hundred and thirty-two from the performance of a contract to labour on such estate, portion, or part, shall again be bound to labour on the estate, portion, or part, as the case may be, to which the certificate relates.

H.—Complaints made by Labourers.

134. If any labourer states to his employer, or any person acting on behalf of his employer, that he desires to make a complaint to the Inspector or to any Magistrate of personal ill-usage, or breach, on the part of his employer or such person, of any provisions of this Act, or of any rule of the Local Government made hereunder, the person to whom such statement is made shall forthwith send such labourer to the Inspector or Magistrate within the local limits of whose jurisdiction the estate wherein he is employed is situate. Provided that, if more than ten labourers at any one time so state their desire to make such a complaint, the person to whom the statement is made may, instead of sending such labourers to such Inspector or Magistrate, give him notice in writing of their complaint.

135. Whenever any such complaint is made to an Inspector or Magistrate, or whenever any Inspector or Magistrate receives notice in writing of any such complaint, or has other reasonable grounds for believing that any employer or person acting on his behalf has personally ill-used, or committed any breach mentioned in section one hundred and thirty-four in respect of, any labourer, such Inspector or Magistrate shall, as soon as may be, proceed to some place not more than ten miles from the principal place of business of such employer situate within the local limits of his jurisdiction, and inquire into the matter complained of:

Provided that, if the place in which an Inspector or Magistrate has reasonable grounds for believing that such ill-usage or breach has been

committed is situate beyond the local limits of his jurisdiction, he shall, instead of inquiring into the matter himself, forthwith send information thereof in writing to the Inspector or Magistrate within the local limits of whose jurisdiction such ill-usage or breach has been committed.

For the purposes of an inquiry under this section, the Inspector or Magistrate may summon and examine any person as a witness.

136. If, upon such inquiry made on the complaint of a labourer, the Inspector or Magistrate is of opinion that the complaint is untrue or frivolous or vexatious,

he shall dismiss the complaint, and in such case shall endorse on the employer's copy of the complainant's labour-contract the number of days during which the complainant has been absent from work in consequence of the inquiry, and the number of days so endorsed shall be added to the period for which the complainant contracted to labour.

Every such endorsement shall be conclusive evidence that the complainant has absented himself from his labour voluntarily and without reasonable cause during the number of days so endorsed.

137. When any complaint is dismissed under section one hundred and thirty-six, the Inspector or Magistrate may award to the employer any reasonable compensation on account of any expense incurred by him in connection with such complaint, and shall endorse the amount of such compensation on the complainant's copy of the labour-contract. The complainant shall be bound to pay the amount so awarded; and in default of such payment his labour-contract shall not be deemed to have determined until he has worked off such amount at the rate of one day's labour for each four annas of such amount.

138. If, upon such inquiry by a Magistrate or by an Inspector who is a Magistrate, such Magistrate or Inspector is of opinion that there is sufficient ground for proceeding with the case, he shall dispose of the same according to law. If the Inspector is not a Magistrate, and is of such opinion, he shall, without delay, send the complainant and his witnesses (if any) to the nearest Magistrate; and such Magistrate shall thereupon dispose of the case according to law.

139. If, upon the complaint of any labourer, it is proved to the satisfaction of a Magistrate that the wages of such labourer are in arrear for two months, or

if the wages of any person whose labour-contract has determined are proved to the satisfaction of a Magistrate to have been withheld for any period after such determination, the Magistrate may award to such labourer or person the amount which appears to be then due to him; and

also, by way of compensation, such further sum, not exceeding that amount, as to such Magistrate seems just; and, in case of default in payment of the amount so awarded, the Magistrate shall levy such amount by distress and sale of any moveable property belonging to the employer of such labourer or person.

Power to cancel contract
on conviction of employer,

140. Whenever it is proved to the satisfaction of a Magistrate—

(a) that any employer, or any person placed by him in authority over any labourer, has been convicted of any offence causing injury to the person, or loss or damage to the property, of such labourer, and under the Code of Criminal Procedure triable exclusively by the Court of Session, or

(b) that any employer, or other person as aforesaid, has been twice convicted of any such offence against such labourer, and under the said Code triable by a Magistrate, or

(c) that the wages of any labourer are in arrear to an amount exceeding the whole of such labourer's wages for four months, or
or if wages are in arrear for more than four months,

(d) that any labourer has been compelled by his employer or by any person placed by his employer in authority over him to perform any labour while he was unfit for it, or has been subjected to ill-usage by his employer or any such person,
or if ill-usage is proved.

such Magistrate may, if he thinks fit, on the application of the labourer aggrieved, cancel the labour-contract of such labourer, and award to him compensation not exceeding thirty rupees.

Every such cancelment shall be certified by the Magistrate on the back of the labourer's copy of the labour-contract, or, if the same be not forthcoming, by writing under the Magistrate's hand delivered to the labourer.

I.—Determination of Labour-contract.

141. Whenever a labour-contract determines, the employer shall endorse on the labourer's copy of the contract the fact of such determination, or, if such copy be not forthcoming, shall give to the labourer a certificate of such determination; and, if the employer refuses or neglects to do so, the Inspector may, on application by the labourer, make such endorsement, or give such certificate.

The employer shall give to the Inspector notice in writing of such determination within one month from the date thereof.

142. If any labourer is able and desirous to redeem the unexpired term of his labour-contract, or of the labour-contract of any member of his family, by payment of a sum equivalent to the value of such unexpired term, such labourer may require his employer to take him, or allow him to go, before the Inspector within the local limits of whose jurisdiction he may be employed; and, on his depositing such sum with such Inspector, the Inspector shall give notice to the employer that the labourer requires him, within one week, to show cause why the labourer, the unexpired term of whose contract is proposed to be redeemed, should not be released from his contract. If no sufficient cause is shown, the Inspector shall require such labourer's copy of the contract to be produced, and on production thereof shall endorse thereon a certificate that he has been released under this section from such contract, or, if such copy be not forthcoming,

shall deliver to the labourer a certificate under his hand to that effect; and shall, in either case, hold the sum so deposited to the credit of the employer of such labourer.

The value of the unexpired term of a labour-contract shall, for the purposes of this section, be deemed to be the aggregate amount of one rupee for every month of the unexpired portion of the first year, of three rupees for every such month of the second year, and of five rupees for every such month of the third, fourth, and fifth years of the original term of the contract.

CHAPTER VII.

SUPPLEMENTARY POWERS.

Power of the Local Government to make rules.

143. The Local Government may make rules consistent with this Act—

- (a) to define and regulate the power and duties of the several officers appointed by it under this Act;
- (b) to prescribe what returns and reports shall be made under this Act by any such officers or by any contractors or local agents within the territories under its administration, and the form in which they shall be respectively so made;
- (c) to prescribe the forms of all registers, licenses, certificates, and notices required under this Act with respect to the territories under its administration;
- (d) to prescribe the particulars to be registered by a Registering Officer in respect of each person who is brought before him in any district under its administration for registration as a labourer or dependent;
- (e) to prescribe the fees to be paid for any license granted under this Act by any officer appointed by it, and for the registration of labourers or dependents in any district under its administration;
- (f) to prescribe the conditions upon which any officer appointed by it may grant licenses to masters of vessels carrying passengers to any labour-district; to provide for the ventilation, cleanliness, and water-supply of such vessels in respect of which licenses are granted hereunder by any such officer; and to prescribe the lists, returns, and reports to be kept and submitted by the masters of such vessels;
- (g) to prescribe the description, quantity, and quality of provisions, medical drugs, and other stores to be taken on board such vessels carrying labourers when such vessels are within the territories under its administration, and the daily allowance to be issued to each labourer and dependent during the journey through such territories; to prescribe the number of officers, cooks, and other servants to be carried on board such vessels, and to provide generally for the accommodation of labourers and their dependents on such vessels;

- (h) to provide for the accommodation, food, clothing, and medical treatment of all labourers and dependents detained on account of sickness by order of a Magistrate at any place within any district under its administration ;
- (i) to declare the routes through the territories under its administration by which labourers and their dependents shall not travel to the labour-districts ;
- (j) to prescribe the house-accommodation, water-supply, sanitary arrangements, and amount and kind of food-grains to be provided by employers for their labourers, and to regulate the rations to be supplied to labourers under this Act in the labour-districts under its administration ;
- (k) to provide for the hospital-accommodation and medical treatment of labourers in such labour-districts, and to prescribe the nature, quality, and quantity of medical drugs and other stores to be provided for such labourers ;
- (l) to provide for the management and regulation of contractors' depôts and of hospital-depôts situate within the territories under its administration, and for the support and medical treatment of labourers and their dependents passing through such depôts ;
- (m) to prescribe the clothing to be supplied to labourers and their dependents while proceeding to the labour-districts through the territories under its administration ; and, generally,
- (n) to give effect to the provisions of this Act within the districts subject to its administration.

144. The Lieutenant-Governor of Bengal and the Chief Commissioner of Assam may further respectively make rules consistent with this Act to provide for the detention and inspection of vessels in respect of which licenses are granted hereunder, and passengers being natives of India carried thereon while in transit through the territories respectively administered by them.

145. The Local Government may, subject to the control of the Governor-General in Council, by rule prescribe as a penalty for the infringement of any rule made by it hereunder, or of any provision of this Act for a breach of which a penalty is not expressly provided, a fine which may extend to five hundred rupees.

All rules made under this Act by the Local Government shall be published in the local official Gazette, and shall thereupon have the force of law.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

146. Whoever knowingly induces or assists, or attempts to induce or assist, any native of India to emigrate in contravention of a notification published under section five, shall be punished with fine which

may extend to fifty rupees for every such native whom he so induces or assists, or attempts to induce or assist.

Recruiter removing, &c.,
unregistered persons.

147. Whoever, being a recruiter,

removes, or attempts to remove, any person to a depôt before he has been registered under section thirty-two, or induces or attempts to induce him to go to a depôt or to leave the local limits of the jurisdiction of the Registering Officer before whom such person ought to be brought under section thirty-one, or aids or attempts to aid such person in going to a depôt, or in leaving any such local limits, before he has been so registered,

or induces or attempts to induce any person who has been so registered to proceed to any place other than the depôt which has been established by the contractor on whose behalf such recruiter is licensed, or conveys or attempts to convey him to such place,

shall be punished, in respect of every such person, with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

148. Whoever, being a recruiter or a persons deputed by him to

Recruiter not supplying proper food, &c. accompany labourers to a depôt, fails to provide any labourer or any dependent whom he accompanies on the journey to the depôt with proper and sufficient food and lodging, or otherwise ill-treats such labourer or dependent on such journey, shall be punished with fine which may extend to fifty rupees; and, in default of payment of such fine within twenty-four hours, with imprisonment for a term which may extend to one month.

The convicting Magistrate may award the whole or any portion of any fine levied under this section as compensation to the labourer in respect of whom, or of whose dependent, such failure or ill-treatment has occurred.

149. Any labourer engaged by a recruiter, and who, having been

Labourer refusing without reasonable cause to execute contract at depôt. registered under section thirty-two, without reasonable cause refuses or neglects, when at the depôt, to execute, within thirty days after his arrival at such depôt, a labour-contract in conformity with the terms made known to him when he was registered, shall be punished with fine which may extend to the amount of the expense incurred in registering him and conveying him to the depôt, and maintaining him therein; and, in default of payment of such fine, with imprisonment for a term which may extend to one month.

Any labourer so punished may be forthwith discharged from the depôt.

Every fine levied under this section shall be paid to the contractor, sub-contractor, or recruiter by whom such expense was incurred.

150. Any labourer registered under section sixty-six who, without

Labourer refusing to execute contract with garden-sardâr. reasonable cause, refuses or neglects to execute, within fifteen days from the day on which he was so registered, a labour-contract in conformity with the terms made known to him when he was registered, shall

be punished with fine which may extend to twenty rupees, or to the amount of the expense reasonably incurred by the garden-sardár in procuring his registration, whichever amount is least.

Every fine levied under this section shall be paid to the garden-sardár by whom such expense was incurred.

Garden-sardár failing to report himself, &c.

151. Whoever, being a garden-sardár,

fails, within fourteen days after his arrival in the local area within which he is authorized to enter into contracts under this Act, to report himself to the local agent (if any) specified in his certificate, or

removes or attempts to remove any person to a labour-district before he has been registered as provided by section sixty-six, or

induces or attempts to induce any person to go to a labour-district, or to leave the local area specified in the certificate of such sardár before he has been so registered, or aids or attempts to aid him in proceeding to a labour-district, or in leaving any such local area before he has been so registered, or

fails, without sufficient cause, to return to his employer within the time specified in his certificate, or

fails to account for the money advanced to him by his employer for the purpose of engaging labourers, and

whoever, being a garden-sardár or a person appointed under section fifty or section seventy-three to accompany labourers to a labour-district, wilfully abandons any labourer or his dependent on the way to such district,

shall be punished with imprisonment for a term which may extend to one month.

152. Any garden-sardár who

makes over to any contractor, sub-contractor, or recruiter, or to the

Garden-sardár making over labourers to contractors, &c.

garden-sardár or local agent of any employer other than the employer by whom his certificate was granted, any persons engaged as labourers

by him, or

allows any persons, engaged as labourers by any other contractor or sub-contractor or recruiter, to share the accommodation provided by him under section fifty-seven, or

places any person engaged as a labourer by him in a contractor's dépôt, or in the place of accommodation provided by a recruiter in accordance with the provisions of section twenty-seven,

shall be punished with fine which may extend to ten rupees; and his certificate may be impounded by the convicting Magistrate.

Any Magistrate impounding a certificate under this section shall send it for cancellation to the Magistrate by whom it was countersigned.

153. Any garden-sardár or person appointed by him as provided by

Garden-sardár failing to comply with instructions indorsed on way-bill.

section seventy-three, who accompanies labourers to the labour-districts, and fails to present a way-bill as required by section seventy-six or

to carry out any of the instructions entered in such way-bill, shall be punished with fine which may extend to twenty rupees.

154. Any master not licensed under section eighty-nine who, in contravention of section eighty-seven, knowingly receives on board his vessel more than twenty passengers being natives of India, and

Master receiving native passengers on board in contravention of Act.
 any master licensed as aforesaid who knowingly receives on board his vessel any such passengers in excess of the number specified in his license, or in any order of an Embarkation Agent under section ninety-one, for the purpose of transporting them to a labour-district, shall be punished with fine which may extend to two hundred rupees for each passenger so received.

Nothing in this section applies to the master of a vessel exempted under section eighty-seven.

155. Any master licensed under section eighty-nine, who, with intent to defraud, does, or suffers to be done, any Fraudulent alteration of vessel after grant of license. act or thing whereby the state of his vessel is altered, so that such vessel is unfit for the accommodation of the number of passengers specified in his license, or in any order made under section ninety-one by an Embarkation Agent, shall be punished with fine which may extend to two hundred rupees.

156. Any master licensed as aforesaid, who proceeds on his voyage Master not complying with his vessel carrying labourers without having section 94. ing complied with the provisions of section ninety-four, shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months.

157. Any master licensed as aforesaid, who fails to comply with an Master not complying order of an Embarkation Agent made under with order under section 96. section ninety-six, shall be punished with fine which may extend to two hundred rupees for each day during which he fails to comply with such order after the day on which the order was received by him.

158. Any master licensed as aforesaid, causing or permitting a labourer finally to leave his vessel contrary to the Master permitting labourer to leave vessel contrary to section 98. provisions of section ninety-eight, shall be punished with fine which may extend to two hundred rupees for each labourer so leaving his vessel.

159. Any master licensed as aforesaid, who wilfully omits to comply with the provisions of section ninety-nine, shall be punished with fine which may extend to two hundred rupees. Master or officer wilfully omitting to stop vessel at certain places.

160. Any person who disobeys any order made under section one hundred and one by a Magistrate shall be punished with fine which may extend to two hundred rupees. Person disobeying Magistrate's order as to communication between vessel and land.

161. Any master licensed as aforesaid, or any Medical Officer in charge of his vessel, who wilfully omits or neglects to obey or enforce on board of such vessel any provision of this Act or any rule made hereunder, shall be punished with fine which may extend to two hundred rupees. Master or Medical Officer disobeying or neglecting to enforce rules.

162. Any labourer who, having been registered under section thirty-two or section sixty-six, deserts while on his journey from the district in which he has been so registered to a labour-district, or without reasonable cause refuses or neglects to proceed from the district in which he has been so registered, or to embark in any vessel when called upon to do so by an Embarkation Agent, shall be punished with imprisonment for a term which may extend to three months.

163. Any employer who refuses or wilfully omits to keep such registers, or to make such periodical returns in writing to the Inspector, as may be prescribed by any rule made hereunder, or who knowingly keeps an incorrect register or makes an incorrect return, or who wilfully omits to prepare, file, or stick up a schedule as required by section one hundred and fifteen, shall be punished with fine which may extend to two hundred rupees.

164. Any employer, or any person acting under his orders or on his behalf, who wilfully obstructs any entry, inspection, or inquiry made under section one hundred and fourteen, shall, for every such offence, be punished with fine which may extend to two hundred rupees.

165. Any employer, or any person acting under his orders or on his behalf, who compels any labourer to perform any labour, knowing that he is at the time unfit to perform such labour, shall be punished with fine which may extend to two hundred rupees.

166. Any person who buys the rations which have been furnished under section one hundred and twenty-five to any labourer, and any labourer who sells any such rations, shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

167. Any employer who wilfully omits to provide house-accommodation, water-supply, sanitary arrangements, food-grains, or rations in accordance with the provisions of this Act or any rule made hereunder, shall be punished with fine which may extend to five hundred rupees; and the convicting Magistrate may order him to comply with such provisions within a reasonable time to be fixed in the order.

If the employer wilfully omits to comply with such order within the time so fixed, he shall be punished with fine which may extend to one hundred rupees for each day during which such omission continues.

If the employer fails to pay the last-mentioned fine, the person on whose account he has been acting shall be liable to pay such fine.

168. Any employer who fails to provide such hospital-accommodation for, or to make such provision for the medical care and treatment of, labourers, as is required by any rule made under this Act,

shall be punished with fine which may extend to two hundred rupees for each week during which such default continues.

169. Where any estate or portion thereof has been found under section one hundred and twenty-nine, or declared under section one hundred and thirty-two, unfit for the residence of labourers or any class of labourers, as the case may be, every employer who, until a certificate has been given under section one hundred and thirty-three, causes or permits such labourers or class of labourers to reside or labour upon such estate or portion, shall be punished with fine which may extend to two hundred rupees.

170. Every employer may, on or before the fifteenth day of each month, send to the Inspector a statement in writing containing the names of all or any of his labourers who, voluntarily and without reasonable cause, absented themselves from labour during the preceding month, and specifying the periods of such absence. When any employer sends any such statement in writing, he shall at the same time notify to each labourer concerned the fact that he has done so.

Any Inspector who receives any such statement shall, when next visiting the estate on which the labourers to whom such statement relates are employed, inquire into each such case of absence, in the presence of the labourer concerned, and, if satisfied that the labourer has voluntarily and without reasonable cause absented himself, shall, unless the labourer consents to forfeit to his employer the sum of four annas for each such day of absence, endorse such days of absence on the labour-contract of such labourer, and add them to the term of such contract.

171. Any labourer who, voluntarily and without reasonable cause, absents himself from his labour for more than seven consecutive days, or for more than seven days in any one month, shall be liable to forfeit his wages for the period of such absence, and to pay to his employer a sum not exceeding four annas for each such day of absence, and shall also be liable to imprisonment for a term which may extend to fourteen days; and in case such absence has extended to twenty days in any two consecutive months, to imprisonment for a term which may extend to one month.

Explanation.—Ill-treatment of such labourer by his employer, or failure of the employer to fulfil any condition of the labour-contract binding on the employer, is reasonable cause within the meaning of section one hundred and seventy and this section.

172. If any labourer deserts from his employer's service, such employer, or any person acting on his behalf, may, without a warrant and without the assistance of any police-officer, arrest such labourer wherever he may be found: Provided that, if such labourer be found within five miles of the place where a Magistrate resides or in the service of another employer, he shall not be arrested without warrant.

Every police-officer shall assist in arresting any such labourer if so required by the employer or person acting on his behalf.

Whoever arrests a labourer under this section shall, without delay, take him to the police-station nearest to the place of the arrest; and, if he fails to do so, shall be punished with fine which may extend to two hundred rupees.

173. The police-officer in charge of such station shall, on the appearance of the parties, take down in writing the statement of the person arresting the labourer, and shall then forthwith send the labourer to the nearest Magistrate.

Such Magistrate shall either inquire into and dispose of the case himself, or, if the estate of the employer from whose service the labourer deserted is not situate within the local limits of such Magistrate's jurisdiction, he shall forward the labourer to the Magistrate within the local limits of whose jurisdiction such estate is situate.

The Magistrate to whom the labourer is forwarded shall dispose of the case according to law.

174. Whenever an employer or a person acting on his behalf complains to a Magistrate that a labourer has deserted from his employer's service, such Magistrate may, without previously examining the complainant, issue a summons for the attendance of such labourer, or a warrant for his arrest, and fix a day for hearing the complaint.

175. Every labourer who deserts from his employer's service shall be punished with imprisonment for a term which may extend to one month. For a second conviction for a like offence he shall be punished with imprisonment for a term which may extend to two months. For a third and every subsequent conviction for a like offence he shall be punished with imprisonment for a term which may extend to three months.

176. If it appears to the Magistrate trying a labourer for deserting from his employer's service that such labourer was arrested without sufficient cause, such Magistrate may impose a fine, which may extend to fifty rupees, on the employer or person acting on his behalf by whom, or at whose instance such labourer was arrested. The Magistrate may in his sentence direct that the whole or any part of such fine be paid by way of compensation to the labourer so arrested.

177. Whenever any labourer has actually suffered imprisonment for terms amounting in the whole to six months for desertion from his employer's service, the Inspector shall cancel the labour-contract of such labourer, and shall, endorse on his copy of the contract a certificate of such cancellation; or, if such copy be not forthcoming, he shall give to the labourer a written certificate of such cancellation.

178. Any labourer guilty of habitual drunkenness, or wilfully disregarding any sanitary regulation approved by the Inspector and duly notified for the guidance of the labourers on the estate on which

such labourer is employed, shall be punished with fine which may extend to five rupees or with imprisonment for a term which may extend to one week.

179. The employer of any labourer sentenced to imprisonment for any offence under this Act, or any person authorized to act in this behalf for such employer may apply to the Magistrate, at any time previous to the expiry of such sentence, that such labourer be made over to him for the purpose of completing his labour-contract. On such application being made, the Magistrate may, if he thinks fit, order that such labourer be made over or forwarded to his employer;

and in that case such Magistrate shall cancel the remainder of the sentence passed on the labourer, and shall endorse on his copy of the labour-contract a certificate of such cancellation, or, if such copy be not forthcoming, shall give him a written certificate of such cancellation.

Nothing in this section shall be deemed to affect the provisions of section one hundred and seventy-seven.

180. Every employer who obtains an order of a Magistrate for the making over or forwarding of any labourer shall be liable to defray the expense (if any) incurred in such making over or forwarding; and shall, before the order is issued, deposit with the Magistrate a sum sufficient in the Magistrate's opinion to defray such expense.

181. On the expiry of any sentence of imprisonment for any offence under this Act, the Magistrate shall, subject to the provisions of section one hundred and seventy-seven, make over such labourer to any person appointed on the part of his employer to take charge of him; and no conviction under this Act, or imprisonment under such conviction, shall, save as aforesaid, operate as a release to any labourer from the terms of his labour-contract:

If no person is present on the part of the employer to take charge of the labourer at the expiry of his sentence, the Magistrate shall forward such labourer to the principal place of business of his employer situate within the local limits of such Magistrate's jurisdiction, and the expense of such forwarding shall be recoverable from such employer as if it were an arrear of land-revenue.

182. When any labourer is convicted under section one hundred and seventy-one of absence from labour, or is sentenced to imprisonment for an offence under this Act, the Magistrate so convicting or sentencing him shall endorse on the employer's copy of the labour-contract the period during which such labourer is convicted of being absent from his labour, or the term for which he is sentenced to imprisonment, or both, as the case may be.

The period so endorsed shall be added to the term for which such labourer contracted to serve; and such labourer shall not be deemed to have performed his labour-contract till he has served for the term specified therein in addition to the period so endorsed.

183. Whoever, knowing that any labourer is bound by his labour-

Other person enticing away, harbouring, or employing labourer under labour-contract.

contract to labour for any employer, voluntarily entices or attempts to entice such labourer to leave such employer, or harbours or employs any such labourer who has, in contravention

of the terms of his labour-contract, left his employer, shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

The convicting Magistrate may, in his discretion, award to the employer with whom such labourer has contracted the whole or any part of any fine levied under this section.

184. Whoever, being bound by section one hundred and thirty-

Employer or other person neglecting to send labourer before Magistrate as provided by section 134.

four to send any labourer before, or to give notice of any complaint to, an Inspector or Magistrate, refuses or neglects so to send such labourer, or to give such notice, shall be punished with fine which may extend to two hundred rupees.

185. Any employer who—

Employer refusing to endorse labour-contract, &c., as required by section 141.

refuses or wilfully neglects to endorse the labourer's copy of his contract as required by section one hundred and forty-one, or

detains a labourer after the determination of his labour-contract, or fails to give to the Inspector notice in writing of such determination within one month of the date thereof, shall be punished with fine which may extend to two hundred rupees.

186. Any employer or person acting for an employer who refuses

Employer or other person neglecting to comply with request of labourer wishing to redeem unexpired term.

or neglects to comply with the request of a labourer made under section one hundred and forty-two shall be punished with fine which may extend to two hundred rupees.

187. Whoever abets, within the meaning of the Indian Penal Code,

Abetment.

any offence against this Act or any rule made hereunder shall be punished with the punishment provided for such offence.

188. Whoever commits any offence against this Act or any rule

Place of trial for offences.

made hereunder shall be triable for such offence in any place in which he may be found as well as in any other place in which he might be tried under any law for the time being in force.

189. Nothing in this Act shall be deemed to prevent any person

Saving of prosecutions under other laws.

from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made hereunder, or from being liable under any other law to any penalty higher than that provided by this Act for such offence: Provided that no person shall be punished twice for the same offence.

CHAPTER IX.

MISCELLANEOUS.

190. All arrears of wages due under any labour-contract shall be a charge upon the estate upon which the labourer to whom such labour-contract relates has been engaged to labour; or if he has engaged to labour upon any one of several estates managed by the same employer, shall be a charge upon that one of such estates upon which such labourer for the time being actually labours.

191. Whenever an estate on which any labourer has under this Act contracted to labour is transferred by act of parties or operation of law, or devolves, the person to whom it is so transferred or on whom it devolves shall be bound by the labour-contract of such labourer in the same manner and to the same extent as the person by or from whom it is transferred or devolves would have been bound by such contract, and shall have the same rights and remedies under such contract as such person would have had thereunder, if the estate had not been transferred or had not devolved.

No person who has ceased to be the owner of the estate upon which any labourer has under this Act contracted to labour shall be liable in respect of any breach of the labour-contract of such labourer which occurs after he has ceased to be such owner.

192. Subject to the power of a Magistrate under this Act or the Code of Criminal Procedure to award fines in whole or in part as compensation to or for the benefit of any complainant or other person, the Local Government shall credit all fines, fees, and rates levied and paid under this Act in the territories under its administration to a fund which shall be called the "Inland Labour Transport Fund;" and such fund shall be at the disposal of such Local Government, in such manner as the Government of India may direct, for paying the salaries and allowances of all officers and establishments appointed under this Act by such Local Government and their pensionary and leave-allowances, and generally for defraying the expenses of carrying out the purposes of this Act and the rules of the Local Government made hereunder. The annual surplus accruing in such fund shall be applied to reducing the annual rate or the registration-fees leviable under this Act, and not otherwise.

193. All sums heretofore expended on roads or other communications by the Lieutenant-Governor of Bengal out of the Inland Labour Transport Fund constituted by the said Bengal Act No. VII. of 1873 shall be deemed to have been expended in accordance with law.

194. An Assistant Inspector shall perform all such duties and exercise all such powers of an Inspector as he is authorized in writing by the Inspector to perform or exercise.

195. All powers conferred by this Act on the Local Government, or on any Superintendent, Medical Inspector, Emigration Agent, or other officer, may be exercised from time to time as occasion requires.

THE SCHEDULE.

(See section 9.)

Form of Labour-contract between Labourer and Employer.

This contract, made under the Inland Emigration Act, 1882, between *A B* (hereinafter called *the labourer*) of the one part, and* [*C D* (*agent or local agent or garden-sardár*) on behalf of] *E F* (hereinafter called *the employer*) on the other part, witnesseth that the said* [*agent or local agent or garden-sardár* on behalf of the said] employer doth hereby promise the said labourer, that if he, the said labourer, do remain and

* Parts in brackets to be omitted if the contract is made without the intervention of an agent, local agent, or garden-sardár.

† As the case may be. labour on the $\frac{X \text{ estate}}{Y \text{ estates}}$ † of his said employer in the labour-district of _____ for the term of _____ years from the date of the execution of this contract, he, the said employer, will, from the date on which the said labourer commences to labour on such $\frac{\text{estate}}{\text{estates}}$, pay or cause to be paid to the said labourer monthly wages

† State rates for various periods of contract. at the rate of Rs. † _____ for a completed daily task regulated in accordance with the provisions of the said Act, and, when such task is not completed, monthly wages calculated at the same rate in proportion to the amount of work actually done, and that during such period he, the said employer, will supply to the said labourer rice at a price of Rs. — per maund, and will faithfully comply with all rules regarding house-accommodation, medical treatment, and the supply of food-grains or rations to the said labourer, which the Local Government may from time to time prescribe; and this contract further witnesseth that the said labourer doth hereby, in consideration of the aforesaid promise, agree so to remain and labour for the said employer. In witness whereof the said parties to these presents have hereunto set their hands at this day of _____ 18 .

Signature of labourer and of employer (or of his agent, local agent, or garden-sardár).

Form of Description of Labourer.

NAME.	Father's Name.	Age.	Sex.	Caste.	RESIDENCE.			Descriptive marks.
					District.	Thána.	Village.	

[Endorsement to be filled up by Registering Officer before whom the contract is executed.]

I hereby certify that, before the said *A B* signed this contract, I personally explained it to him.

Signed _____

Registering Officer.

[Endorsement on labourer's copy of contract, to be left blank until the contract is determined.]

I hereby certify that the foregoing contract has been determined by effluxion of time (or by mutual consent, or under the provisions of of section of Act , as the case may be).

Dated at

This day of

} _____
Signature of Employer or of Inspector.

ACT NO. XII. OF 1882.

THE INDIAN SALT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH, 1882.

An Act for regulating the duty on Salt, and for other purposes.

WHEREAS it is expedient to amend the law relating to the levy of
Preamble. duty on salt, and to the import and transit of
 salt, and the manufacture of salt and saltpetre,
 into, over, and in British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.
Commencement.

1. This Act may be called "The Indian Salt Act," 1882; and it shall come into force at once.

This section, sections two, seven, and eight, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to
Local extent.

the whole of British India;

The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, and Ajmír and Mairwára, to the Province of Sindh, to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor-General in Central India; and any portion of this Act, other than the portions specified in the

Power to extend Act. second paragraph of this section, may be extended, by order of the Governor-General in Council published in the *Gazette of India*, to any part of British India other than the territories, province, and districts mentioned in the third paragraph of this section.

2. The enactments specified in the schedule hereto annexed are
Repeal of enactments. repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published, and powers conferred under any such enactment, and now in force, shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published, and conferred hereunder.

Interpretation clause. 3. In this Act, unless there be something repugnant in the subject or context,—
 the expression "the said territories" means the territories to which the section of this Act, in which that expression occurs, for the time being extends;
"the said territories":

"Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act;

"salt-revenue officer" means any officer of the Northern India Salt Department, and also includes any person invested by the Local Government with any of the powers of a salt-revenue officer under this Act;

"saltpetre" includes rasi, saji, and all other substances manufactured from saline earth, and khári-nún and every form of sulphate or carbonate of soda; and

"manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor-General in Council may, from time to time, appoint in this behalf.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor-General in Council.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

Power of Governor-General in Council— 6. The Governor-General in Council may, from time to time, by rule—

(a) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;

(b) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned :—

	Rs.
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining...	50
License to manufacture saltpetre	2
License to manufacture sulphate of soda (<i>khári-nún</i>) by solar heat in evaporating pans	10
License to manufacture sulphate of soda (<i>khári-nún</i>) by artificial heat	2
License to manufacture other saline substances	2

(c) determine the manner, time, and place in and at which, and to regulate the collection of duties ; the persons by whom, any duty imposed hereunder shall be collected in the said territories ;

(d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage, and sale of salt within such area ;

to regulate possession of salt in vicinity of places where saltpetre is manufactured ;

(e) define an area round any other place in which salt is manufactured, and regulate the possession, storage, and sale of salt within such area.

CHAPTER III.

DUTY AND PRICE OF SALT.

Power of Governor-General in Council—

7. The Governor-General in Council may, from time to time, by rule consistent with this Act—

(a) impose a duty, not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India ;

to reduce or remit duties ;

(b) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted ;

to fix minimum price of salt excavated, &c., by Government.

(c) fix the minimum price at which salt excavated, manufactured, or sold by or on behalf of the Government of India, shall be sold.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

8. Subject to any general rules or special orders which the Governor-General in Council may, from time to time, make in this behalf, the Local Government may, from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured, or sold by or on behalf of such Local Government, shall be sold.

Power of Local Government to fix minimum price of salt excavated, &c.

the local official Gazette, fix the minimum price at which salt excavated, manufactured, or sold by or on behalf of such Local Government, shall be sold.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

Penalties.

9. Whoever commits any of the following offences (namely) :—

(a) does anything in contravention of this Act or of any rule made hereunder ;

(b) evades payment of any duty or charge payable under this Act or any such rule ; or

(d) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of, any of the offences mentioned in clauses (a) and (b) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both ;

and the convicting Magistrate, on the application of the Assistant Commissioner or salt-revenue officer, may declare to be confiscated all works, materials, and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

10. Any person convicted of an offence under section nine, after Punishment on second having been previously convicted of an offence and subsequent convictions. under that section or section 11 of the Inland Customs Act, 1875, or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section nine ;

and every such person shall, upon every subsequent conviction of an offence under section nine, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

11. A charge of an offence under section nine, or under section 11 Charge by whom to be of the Inland Customs Act, 1875, shall not be preferred. entertained except on the complaint of an Assistant Commissioner or other salt-revenue officer not inferior in rank to a sub-inspector,

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

Limitation.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the

Jurisdiction.

second class.

12. All salt or saltpetre in respect of which any offence mentioned in section nine has been committed, together with the vessels, packages, or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any salt-revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated, or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package, or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package, or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor-General in Council may, from time to time, by

Power to levy additional rule, direct that any salt-revenue officer, not inferior in rank to an assistant inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section nine has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III. of this Act.

The imposition of every such penalty shall be at once reported, if the salt in respect of which an offence has been committed exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

14. Any zamíndár or other proprietor of land, and any agent of a

Punishment for connivance at offences mentioned in section nine. zamíndár or proprietor of land, who wilfully connives at any offence mentioned in section nine, shall, for every such offence, be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE, AND ARREST.

15. Any salt-revenue officer empowered in this behalf by the Local

Power to search places where article is manufactured under license. Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to detain suspected person and to seize goods liable to confiscation.

16. Any salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act ;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section nine has been committed, or that any duty is payable, together with the vessels, packages, or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

17. Any salt-revenue officer may arrest any person whom he has

Power to arrest.

reason to believe to have committed any such offence as last aforesaid.

18. Whenever any salt-revenue officer, not inferior in rank to a

Procedure of officer having reason to believe unlawful manufacture.

sub-inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined, or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable, (a) the name, residence, and calling of the informant (if any); (b) the locality and description of the house, boat, or place where the officer believes that the salt or saltpetre is being so manufactured, refined, or stored; (c) the name of the person by or for whom the salt or saltpetre is so manufactured, refined, or stored; and (d) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined, or stored;

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat, or place to be searched is situate to attend him;

and may then, after sunrise and before sunset (but always in the

Power to enter and search.

presence of an officer of police not inferior in rank to a head-constable), enter and search any house, boat, or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined, or stored;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined, or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat, or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat, or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat, or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

19. Any officer in charge of a police-station who, on application in

Failure of police-officer to attend.

writing made by a salt-revenue officer to attend for any of the purposes specified in section eighteen, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head-constable, so to attend, shall, for every such offence, be punished with fine which may extend to five hundred rupees.

20. Whenever a salt-revenue officer under the rank of Assistant

Report of arrest, seizure, and search. **Commissioner arrests under this Act any person,**

or seizes any article as liable to confiscation under this Act, or enters any house, boat, or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate), within forty-eight hours next after such arrest, seizure, or entry, make a full report of all the particulars of such arrest, seizure, or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of police attending any search made under section eighteen shall report the same to his official superior.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section twelve.

If the article seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

22. Any article in respect of which a penalty is imposed under section thirteen may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section :

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the salt-revenue officer detaining the same, such article shall be at once released.

When an article is so detained, it shall, on the receipt of the said order, be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section twenty) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

24. All officers of police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the salt-revenue officers in the execution of this Act.

Vexatious search, seizure, &c., by salt-revenue officer.

25. Any salt-revenue officer who—

(a) without reasonable ground of suspicion searches or causes to be searched any house, boat, or place ;

(b) vexatiously and unnecessarily detains, searches, or arrests any person ;

(c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act ;

(d) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall, for every such offence, be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false [information, and so causing a search to be made under this Act, shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

26. The Governor-General in Council may, from time to time, make rules consistent with this Act to regulate the seizure, disposal, and destruction of things liable to be seized under this Act.

Power to regulate seizures and disposal of things seized.

Such rules may, among other matters, provide—

(a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale ;

(b) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties, and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties, and charges defrayed from the proceeds of the sale ;

(c) that the surplus-proceeds of a sale under clause (a) or clause (b) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.

MISCELLANEOUS.

27. The Governor-General in Council may, from time to time, by
Power to prohibit import and transit of salt. rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

28. In addition to the rules which the Governor-General in Council
Further matters for which Governor-General in Council may make rules. is hereinbefore empowered to make, he may, from time to time, make rules, consistent with this Act, to regulate the following matters, namely:—

(a) the persons by whom, and the time, place, and manner at or in which anything to be done under this Act shall be done;

(b) the cases in which, and the officers to whom, and the conditions subject to which, orders given by salt-revenue officers under this Act shall be appealable;

(c) the fee to be charged on account of any license, pass, certificate, dākhilā, rawāna, or other such document issued under this Act; and generally to carry out the provisions herein contained.

29. All rules made under this Act shall be published in the
Publication of rules. *Gazette of India*, and shall thereupon have the force of law.

30. Subject to the provisions herein contained, and to any rules
Power to confer powers of Assistant Commissioner and salt-revenue officers. for the time being in force made by the Governor-General in Council, the Local Government or the Commissioner of Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on salt-revenue officers.

Amendment of Madras Act VI. of 1871.

31. For section 11 of the Madras Salt Excise Act, 1871, the following shall be substituted:—

“11. The excise-duty on salt manufactured in any district, or part
Levy of duty on salt. of a district, to which this Act may be extended, shall be paid under such orders as the Board of Revenue from time to time makes in this behalf; but no such duty shall be leviable until the salt is about to be removed from the place of storage, and no salt shall be so removed without a permit authorizing its removal from store, and such permit shall specify the quantity to be removed and the excise-duty levied or due thereon.”

SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VIII. of 1875 ...	The Inland Customs Act, 1875.	The whole.
II. of 1876 ...	The Burma Land and Revenue Act, 1876.	Section 39, clause (b), and in clause (c) of the same section the words and letter "under clause (b)."
XVIII. of 1877 ...	The Salt Act, 1877.	The whole.

REGULATION.

III. of 1877 ...	The Ajmir Laws Regulation, 1877.	Sections 36 and 37.
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ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VII. of 1864 ...	The Salt Act, 1864.	Section nine.

ACT NO. XXII. OF 1881.

THE EXCISE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH OCTOBER 1881.

An Act to amend the law relating to the Excise-revenue in Northern India, British Burma, and Coorg.

Preamble. WHEREAS it is expedient to amend the law in force in Northern India, British Burma, and Coorg relating to the production, sale, possession, and import of spirit, fermented liquors, and intoxicating drugs, and the collection of the revenue derived therefrom ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Excise Act, 1881":

Local extent. It extends to the territories administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára ; and

Commencement. it shall come into force on the first day of January, 1882.

Repeal of Act X. of 1871. 2. On and from that day the Excise Act, 1871, shall be repealed, but all rules made, powers conferred, and licenses and farms granted under that Act and in force

on the same day, shall be deemed to have been respectively made, conferred, and granted under this Act.

Interpretation-clause.

3. In this Act—

"Chief Revenue-authority":

(a) "Chief Revenue-authority" means—

in the territories administered by the Lieutenant-Governor of the North-Western Provinces—the Board of Revenue ;

in the territories administered by the Lieutenant-Governor of the Panjáb—the Financial Commissioner ; and

in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára—the Chief Commissioner :

(b) "Collector" includes any Revenue-officer in independent charge of a district and any officer appointed by the Local Government to discharge, throughout any

specified local area, the functions of a Collector under this Act :

"Commissioner of Revenue" means any officer appointed by the Local Government to discharge, throughout any

specified local area, the functions of a Commissioner of Revenue under this Act :

(c) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District :

"Place": (d) "Place" includes also house, boat, and raft :

"Tárl": (e) "Tárl" means the sap of any kind of palm-tree :

(f) "Fermented liquor" means malt liquor, wine, pachwai, and fermented tárl, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor-General in Council, so directs, include any other fermented liquor, and also tárl, though it may not have perceptibly begun to ferment :

"Spirit": (g) "Spirit" means any liquor containing alcohol obtained by distillation :

(h) The expression "intoxication drugs" means gánja, bhang, "Intoxicating drugs": charas, and every preparation and admixture of the same :

"Tola": (i) "Tola" means a weight of one hundred and eighty grains Troy :

"Ser": (j) "Ser" means a weight of eighty tolas :

(k) The articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,—

foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles ;

country spirit, one ser, and in British Burma one reputed quart bottle ;

country fermented liquor, four sers, and in British Burma four reputed quart bottles ;

bhang, or any preparation or admixture thereof, one quarter of a ser ;

gánja or charas, or any preparation or admixture thereof, five tolas :

"Wholesale." If sold in larger quantities, they shall be deemed to be sold wholesale.

In any case in which doubt arises the Local Government may

"Country spirit.:" decide what, for the purposes of this Act, shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor"; and such decision shall be binding on the Courts.

"Foreign spirit."

4. Nothing herein contained shall affect Act No. XVI. of 1863 (to Saving of Acts XVI. of make special provision for the levy of the 1863 and III. of 1880. Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry) or the Cantonments Act, 1880.

CHAPTER II.

PRODUCTION OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

5. No person shall construct, work, or possess a distillery, still, or brewery, or manufacture fermented liquor, in any district, except under a license granted by the Collector, or by a person authorized by the Collector to grant such license, and in accordance with the conditions (if any) contained therein.

Manufacture of spirit and liquor without license prohibited.

6. The Collector may, with the previous sanction of the Chief Revenue-authority, from time to time,

(a) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established ;

(b) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

Duty on spirit.

7. No spirit shall be removed from any distillery licensed under section five or established under section six, until—

(a) the duty payable in respect of such spirit under the Indian Tariff Act, 1875, section eleven, has been paid, or

(b) a bond for such duty has been executed, or

(c) a duty in respect of the materials used in making such spirit has been levied at such rates and in such manner as the Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, direct.

Power to make rules as to distilleries and breweries licensed under section 5.

8. The Chief Revenue-authority may, from time to time, make rules as to—

(a) the granting of licenses for distilleries, stills, and breweries under section five ;

(b) the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work ;

(c) the size and description of the stills in such distillery ;

(d) the storing and passing out of the spirit made in such distillery, and the contents of the passes ;

(e) the inspection and examination of the distillery and warehouses, and of the spirit made and stored therein ;

(f) the furnishing of statements of the spirit, and of the stills, coppers, casks, and other utensils, in the distillery.

And for distilleries established under section 6.

9. The Chief Revenue-authority may, from time to time, make rules as to—

(a) the management of distilleries established under section six, and in particular as to the conditions on which any materials to be used in making spirit may be brought into such distillery ;

(b) the conditions on which spirit may be made in such distilleries ; and

(c) the storing and passing out of the spirit so made, and the contents of the passes.

10. Except in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára, the sanction of the Local Government is required to validate rules under sections eight and nine.

11. In British Burma, the cultivation of hemp and the preparation of intoxicating drugs therefrom are prohibited, except under, and in accordance with, a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

In the other territories to which this Act extends, the Chief Revenue-authority may, from time to time, make such rules to restrict and regulate the cultivation of hemp and the preparation of intoxicating drugs therefrom as it may deem necessary to secure the duty leviable in respect of those drugs.

CHAPTER III.

SALE OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

12. No spirit, fermented liquor, or intoxicating drug, shall be sold, except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained.

Spirit, fermented liquor, and drugs not to be sold without license.

Provided as follows—

(a) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease ;

(b) any officer empowered in this behalf by the Chief Revenue-authority may grant to travelling merchants, subject to such rules and restrictions as such authority may from time to time prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district ;

(c) any person making or producing country spirit or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor ;

(d) any cultivator of the hemp-plant may sell any intoxicating drug prepared from his plants to any person licensed under this Act to sell the same, or to any person authorized to purchase the same by the Collector's order in writing.

13. Subject to the rules made by the Chief Controlling Revenue-authority under the power hereinafter conferred, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for

Licenses how granted.

the retail sale of country spirit or country fermented liquor, and (except in British Burma) of intoxicating drugs, within his district or any part thereof or at any place therein.

Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in British Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

Power to cancel license for cause specified therein.

Any license granted under this section may be cancelled by the Collector for any cause specified therein.

14. Whenever the Collector considers that the license of a vendor

Power to cancel license for other causes.

of country spirit, country fermented liquor, or intoxicating drugs, should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or Chief Revenue-authority directs.

On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

15. Any retail vendor licensed under this Act may surrender his

Surrender of retail license.

license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on payment of such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

If the Collector is satisfied that there is a sufficient reason for surrendering a license, he may remit the sum so fixed.

Power to farm fees.

16. The Collector may, with the sanction of the Chief Revenue-authority, let in farm—

(a) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or country fermented liquor or (except in British Burma) of intoxicating drugs:

(b) the right to manufacture, in any district or part of a district in which no distillery is established under section six, country spirit or country fermented liquor.

When the fees so leviable or the right to manufacture such spirit or liquor, or both, are or is let in farm, the

Farmer to grant licenses.

farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue-authority, may, from time to time, make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such

List of licenses granted by farmer to be filed.

articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form and on such day or days in each year as the Chief Revenue-authority may, from time to time, prescribe in this behalf.

Farm may be cancelled.

17. The Collector may, with the sanction of the Chief Revenue-authority, cancel any farm granted under this Act.

18. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer shall be entitled to receive for any loss which he sustains thereby such compensation as the Chief Revenue-authority may determine.

19. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

20. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which *tárl* shall be supplied to licensed vendors of the same, and the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs.

CHAPTER IV.

POSSESSION OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

21. No person shall have in his possession any quantity of any spirit or fermented liquor larger than that specified in section three, clause (k), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the Collector or from some other officer empowered by the Local Government to grant such passes.

Proviso.

Nothing in this section extends to—

(a) any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouseman as such, or purchased by any person for his private use and not for sale, or

(b) *tárl* intended to be used for the manufacture of *gúr* or molasses.

22. In British Burma no person shall have in his possession any intoxicating drugs, except under, and in accordance with the terms of, a general exemption granted by the Chief Commissioner, or a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

In the other territories to which this Act extends, no person shall have in his possession any larger quantity of such drugs than that specified in section three, clause (k), in respect of such drugs, unless he is permitted to manufacture or sell the same.

CHAPTER V.

IMPORT OF SPIRIT.

23. No person shall bring into any territory to which this Act extends any spirit manufactured at any place in Spirit from foreign territory subject to duty. India beyond the limits of British India, until duty equal to the duty prescribed for such spirit under the Indian Tariff Act, 1875, section eleven, has been paid in respect thereof, and a pass has been obtained therefor, from such officer as the Local Government may, from time to time, appoint in this behalf.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

24. The Collector may appoint persons, by name or by virtue of Collectors may appoint their office, to be officers for the collection of Excise-officers. the excise-revenue and for the prevention of offences against this Act; and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

25. The Collector may recover any amount due to the Government Recovery of arrears of under this Act or the rules made hereunder, by fees. distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue due from landholders or from farmers of land or their sureties.

26. Any Excise-officer may enter and inspect at any time, by day Power of Excise-officers or by night, the shop or premises in which any to inspect shops. manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor, or intoxicating drugs.

27. Any Excise-officer may stop and detain To arrest persons carrying spirit, &c., liable to confiscation. any person carrying any spirit, fermented liquor, or intoxicating drug liable to confiscation under this Act;

and may seize such spirit, liquor, or drug, together with any vessels, packages, or coverings in which it is contained, and any animals and conveyances used in carrying it;

and may also arrest the person in whose possession such spirit, liquor, or drug is found.

28. Any Excise-officer in the receipt of a monthly salary of not less than ten rupees may arrest any person having in his possession any article liable to confiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor, or intoxicating drug, and may seize such article, spirit, liquor, or drug. To arrest persons in possession of article liable to confiscation, and to seize article.

29. Whenever any Excise-officer in receipt of such monthly salary as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any To search on information of illicit manufacture or possession.

place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed,

such officer may, after sunrise and before sunset (but always in the presence of an officer of police in the receipt of a monthly salary of not less than ten rupees), enter into such place,

and in case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article,

and may also arrest the occupier of the place, with all other persons concerned in the manufacture of such spirit or in the keeping and concealing of such article.

30. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit or fermented liquor or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

31. The Collector may issue his warrant for the search of any place in which he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor, or intoxicating drug liable to confiscation under this Act is kept or concealed.

Such warrant may be executed by any Excise-officer in the receipt of a monthly salary of not less than ten rupees, at the time and in the manner prescribed in section twenty-nine.

Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section twenty-nine, and shall cease to be in force at sunrise on the day next following.

32. Whenever an Excise-officer arrests any person, or seizes any article liable to confiscation under this Act,

or enters any place for the purpose of searching for any such article,

he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure, or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication.

33. Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested, or the article seized, to the Collector, and the Collector, after such enquiry

as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the immediate discharge of such person or the release of such article.

34. All Police-officers are required to aid the Excise-officers in the due execution of this Act, upon request made by such officers.

CHAPTER VII.

PENALTIES.

35. Whoever, in contravention of section five, constructs, works, or possesses a distillery, still, or brewery, or makes fermented liquor, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both ;

and all spirit and liquor made in contravention of section five, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

36. Any person who—

(a) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section six, any country spirit manufactured at another place, or

(b) in contravention of section seven, or of any rule made under section eight or section nine, removes any spirit from a distillery, or

(c) in contravention of section twenty-three, brings any spirit into any territory to which this Act extends,

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both ;

and the spirit, together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

37. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section eight or section nine, shall be punished with fine not exceeding one hundred rupees.

38. Any person who, in contravention of section eleven or of any rule made thereunder, cultivates hemp or prepares any intoxicating drug, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

39. Any person who, in contravention of section twelve, sells any spirit, fermented liquor, or intoxicating drug, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both,

40. Any person licensed to sell retail spirit, or fermented liquor,

For permitting drunken- or intoxicating drugs, who permits drunken-
ness, &c., in shop. ness, riot, or gaming in his shop, or permits
persons of notoriously bad character to meet or remain therein, or re-
ceives any wearing apparel or other effects in barter for spirit, fer-
mented liquor, or intoxicating drugs, shall be punished with fine which
may extend to two hundred rupees.

41. Any person who possesses any spirit, liquor, or drug, in con-

Illegal possession of spirit, travention of section twenty-one or section
liquor, or drug. twenty-two, shall be punished with imprison-
ment for a term which may extend to three months, or with fine which
may extend to five hundred rupees, or with both ;

and the spirit, liquor, or drug, together with any vessels, packages,
and coverings in which it is contained, and any animals and convey-
ances used in carrying it, shall be liable to confiscation.

42. Any person holding a license under this Act and refusing to

For refusal to produce li- produce the same on the demand of any Ex-
cise and for breach of cise-officer, and any person who breaks any
rules and conditions. rule made under this Act or any condition of a
license granted under this Act, for the breach of which rule or condi-
tion no other penalty is hereby provided, shall be punished with fine
which may extend to fifty rupees.

43. Any owner or occupier of land, and any agent of any such

For conniving at illicit owner or occupier, who authorizes or connives
manufacture or sale of spirit, at the illegal manufacture of spirit or the sale
&c. of spirit or fermented liquor or intoxicating
drugs, shall, for every such offence, be punished with imprisonment for
a term which may extend to four months, or with fine which may
extend to one thousand rupees, or with both.

And any person invested with local jurisdiction, who authorizes or
connives at the illegal sale of any spirit, fermented liquor, or intoxi-
cating drug within the local limits of such jurisdiction, shall be punished
with fine which may extend to five hundred rupees.

44. Any Police-officer who, without lawful excuse, neglects or re-

For police neglecting to fuses to aid an Excise-officer as required by
aid Excise-officers. section thirty-four, and any officer in charge of
a police-station who, on application made by an Excise-officer desiring
to act under section twenty-nine, fails to attend a search himself, or to
depute a subordinate officer of the required rank, shall be punished
with fine which may extend to five hundred rupees.

For vexatious search or
seizure.

45. Any Excise-officer who—

(a) without reasonable grounds of suspicion searches or causes to
be searched any place, or

(b) vexatiously and unnecessarily seizes the moveable property of
any person on the pretence of seizing or searching for any article
liable to confiscation under this Act, or

(c) vexatiously and unnecessarily arrests any person, or

(d) commits any other excess not required for the execution of his
duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

46. Any Excise-officer who, in contravention of section thirty-two

For delay in reporting arrest, &c., or in taking person arrested to Magistrate. or section thirty-three, neglects to report the particulars of an arrest, seizure, or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

47. No complaint of an offence under any one of the following

Prosecutions restricted. sections, namely, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one, forty-two, and forty-three, shall be received unless it is made by the Collector or by an Excise-officer; and no complaint of any offence under this Act shall be received unless it is made within the six months next after the commission of such offence.

48. Every person imprisoned for an offence under section thirty-

Confinement in what jail. seven or section forty-two shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

49. Whoever attempts to commit any offence punishable under

Attempts and abetment. this Act, or abets, within the meaning of the Indian Penal Code, the commission of any such offence, shall be punished with the punishment provided for such offence.

50. Any Magistrate before whom any person is convicted of any

Disposal of fines, &c., as rewards. offence under sections thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one, or forty-three, may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender and paid by him or realized from his property.

51. Any article liable to confiscation under this Act may, on the

Magistrate to pass order of confiscation. application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

CHAPTER VIII.

MILITARY CANTONMENTS.

52. Within the limits of any military cantonment, and within such

Manufacture and sale of spirits, &c., in military cantonments. distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor, shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit or liquor, or the right to manufacture such spirit or liquor, be let in farm, unless with the knowledge and consent of the Commanding Officer;

and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits, shall be immediately cancelled.

53. In all other respects the provisions of this Act shall have effect within such limits or distance: Provided that whenever any arrest or search under this Act is to be made within the limits of any cantonment, the Collector or other officer authorized to make such arrest or search shall, whenever it may be practicable, give previous notice to the Commanding Officer, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible.

CHAPTER IX.

MISCELLANEOUS.

54. The Collector shall, in all proceedings under this Act, be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

The Chief Revenue-authority may revise any order passed by a Collector under this Act or by a Commissioner under this section.

55. The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act—

(a) as to the period for which any license or farm under this Act shall be granted;

(b) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

(c) as to the security to be given by any licensee or farmer under this Act;

(d) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

(e) as to the disposal of things confiscated under this Act;

(f) as to the duties of Excise-officers; and

(g) to provide generally for carrying out the provisions of this Act.

56. The Local Government may, from time to time, by notification in the official Gazette, exempt within any specified local area any specified articles or any specified class of persons from all or any of the foregoing provisions of this Act, and may, by like notification, cancel any such exemption.

ACT NO. III. OF 1867.

THE PUBLIC GAMBLING ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH JANUARY 1867.

An Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the North-Western Provinces of the Presidency of Fort William, and in the Panjáb, Oudh, the Central Provinces, and British Burma.

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories respectively subject to the governments of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, of the Lieutenant-Governor of the Panjáb, and to the administrations of the Chief Commissioner of Oudh, of the Chief Commissioner of the Central Provinces, and of the Chief Commissioner of British Burma ; It is hereby enacted as follows :—

Preamble.

1. In this Act—

“ Lieutenant-Governor ” means the Lieutenant-Governor of the said North-Western Provinces or the Panjáb, as the case may be.

“ Chief Commissioner ” means the Chief Commissioner of Oudh, the Central Provinces, or British Burma, as the case may be :

“ Common gaming-house ” means any house, walled enclosure, room, or place in which cards, dice, tables, or other instruments of gaming, are kept or used for the profit or gain of the person owning, occupying, using, or keeping such house, enclosure, room, or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room, or place, or otherwise howsoever :

Number. Words in the singular include the plural and *vice versa*, and

Gender. Words denoting the masculine gender include females.

2. Sections 13, 17, and 18 of this Act, shall extend to the whole of the said territories ; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by a notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway-station-house, and place being not more than three miles distant from any part of such station-house within the territories subject to his government or administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb, or station-house, and from time to time to alter the limits so defined.

Power to extend Act.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

3. Whoever, being the owner or occupier, or having the use, of

Penalty for owning or any house, walled enclosure, room, or place
keeping, or having charge situate within the limits to which this Act
of, gaming-house. applies, opens, keeps, or uses the same as a com-
mon gaming-house; and

whoever, being the owner or occupier of any such house, walled enclosure, room, or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used, or kept by any other person as a common gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room, or place as aforesaid, opened, occupied, used, or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding three months.

4. Whoever is found in any such house, walled enclosure, room, or

Penalty for being found place, playing or gaming with cards, dice, coun-
in gaming-house. ters, money, or other instruments of gaming,
or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

5. If the Magistrate of a district, or other officer invested with the

Power to enter and au- full powers of a Magistrate, or the District
thorize police to enter and Superintendent of Police, upon credible informa-
search. tion, and after such enquiry as he may think
necessary, has reason to believe that any house, walled enclosure, room, or place is used as a common gaming-house,

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, walled enclosure, room, or place,

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming;

and may seize or authorize such officer to seize all instruments of gaming, and all monies and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein ;

and may search or authorize such officer to search all parts of the house, walled enclosure, room, or place, which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody ;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

6. When any cards, dice, gaming-tables, cloths, boards, or other

Finding cards, &c., in suspected houses, to be evidence that such houses are common gaming-houses.

instruments of gaming, are found in any house, walled enclosure, room, or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room, or place is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or any of his assistants.

7. If any person found in any common gaming-house entered by

Penalty on persons arrested for giving false names and addresses.

any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein

On conviction for keeping gaming-house, instruments of gaming to be destroyed.

for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all monies seized therein to be forfeited ; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. It shall not be necessary, in order to convict any person of keep-

Proof of playing for stakes unnecessary.

ing a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager, or stake.

10. It shall be lawful for the Magistrate before whom any persons

Magistrate may require any person apprehended to be sworn and give evidence.

shall be brought, who have been found in any house, walled enclosure, room, or place, entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room, or place, or touching any act done for the purpose of preventing, obstructing, or delaying the entry into such house, walled enclosure, room, or place, or any part thereof, of any Magistrate or officer authorized as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly, or to answer any such questions aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case be) of the Indian Penal Code.

11. Any person who shall have been concerned in gaming contrary

Witnesses indemnified.

to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. Nothing in the foregoing provisions of this Act contained shall

Act not to apply to certain games.

be held to apply to any game of mere skill, wherever played.

Gaming and setting birds and animals to fight in public streets.

13. A police-officer may apprehend without warrant

any person found playing for money or other valuable thing with cards, dice, counters, or other instruments of gaming, used in playing any game not being a game of mere skill, in any public street, place, or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place, or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person, when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty

rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month ;

and such police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction, under the Code of Criminal Procedure, as to the amount of fine or imprisonment he may inflict.

15. Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the monies or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

17. All fines imposed under this Act may be recovered in the manner prescribed by section 307* of the Code of Criminal Procedure, and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time direct.

* See Act X. of 1882, s. 386, which is the corresponding section.

ACT NO. V. OF 1857.

THE ORIENTAL GAS COMPANY'S ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH FEBRUARY 1857.

An Act to confer certain powers on the Oriental Gas Company, Limited.

WHEREAS a Joint Stock Company has been lately formed for the purpose of introducing gas-works into India, which Company, having been completely registered in England under the Act of Parliament of the eighth year of the reign of Her present Majesty, cap. 110, has since been registered in England under "The Joint Stock Companies' Act, 1856," with limited liability, and has duly obtained a Certificate of Incorporation under the name of the Oriental Gas Company, Limited; and whereas the said Company has erected gas-works on land granted for that purpose by Government in the vicinity of the town of Calcutta, and is engaged in the preparation of apparatus and materials for the manufacture and supply of gas for lighting the said town; and whereas it is expedient that powers and facilities should be given to the said Company to enable them to carry out their undertaking of lighting with gas the said town of Calcutta, which powers and facilities may hereafter be extended to the operations of the said Company in other towns and places; It is enacted as follows :—

1. In the town of Calcutta and its environs, and in any other town

Power to break up street,
&c., under superintendence,
and to open drains.

or place to which the provisions of this Act may hereafter be extended by a law* to be passed for that purpose, the Oriental Gas Company, Limited, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place, within the same limits, pipes, conduits, service-pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas; and, for the purposes aforesaid, may remove and use all earth and materials in and under such streets and bridges; and they may, in such streets, erect any pillars, lamps, and other works, and do all other acts which the said Company shall, from time to time, deem necessary for supplying gas to the inhabitants of the said town of Calcutta and its environs, or other town or place as aforesaid, doing as little damage as may be in the execution of the powers hereby granted, and making compensation for any damage which may be done in the execution of such powers.

2. Provided always that nothing herein shall authorize or empower

Company not to enter on
private land without con-
sent.

the said Company to lay down or place any pipe or other works into, through, or against any building, or in any land not dedicated to

* The extending law since passed is Act XI. of 1867.

public use, without the consent of the owners and occupiers thereof, except that the said Company may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe has been already lawfully laid down or placed in pursuance of this Act, and may repair or alter any pipe so laid down.

3. Before the said Company proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the Municipal Commissioners for the town of Calcutta, or other persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

4. No such street, bridge, sewer, drain, or tunnel, shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or, in case of any difference respecting such plan, then according to such plan as shall be determined by a Magistrate; and such Magistrate may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the said Company to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always that, if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the said Company's intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said Company may perform the work specified in such notice without the superintendence of such persons or their officer.

5. When the said Company open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall, with all convenient speed, complete the work for which the same shall be broken up, and fill in the ground, and re-instate and make good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby; and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up; and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such

further time (if any) not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

6. If the said Company open or break up any street or bridge, Penalty for delay in re-storing street. or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the said Company are hereby authorized to perform such works without any superintendence or notice; or if the said Company make any delay in completing any such work, or in filling in the ground or re-instating and making good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby; or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same shall have been made good or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made, a sum not exceeding 50 rupees for every such offence, and they shall forfeit an additional sum, not exceeding 50 rupees, for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

7. If any such delay or omission as aforesaid take place, the In case of delay other parties may re-instate and may recover expenses. persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed; and the expense of executing the same shall be repaid to such persons by the said Company; and the amount of such expense shall, in case of any dispute about the same, be ascertained and recovered in Calcutta and in any other town or place subject to the jurisdiction of any of Her Majesty's Courts of Judicature, in the manner in which expenses are ascertained and recovered under Act XIV. of 1856, and in any town or place not within the jurisdiction of any of Her Majesty's Courts, in the same manner as damages are recoverable under this Act.

8. The clerk, engineer, or other officer duly appointed for the purpose by the said Company, may, at all reasonable times, enter any buildings or place lighted with gas supplied by the said Company, in order to inspect the meters, fittings, and works for regulating the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall, for every such offence, forfeit to the said Company a sum not exceeding 50 rupees. Power to enter buildings to ascertain the quantity of gas consumed.

9. If any person supplied with gas, or any person to whom any meter or fitting shall have been let for hire by the said Company, neglect to pay the rent due for the same to the said Company, the said Company may stop the gas. Recovery of rent due for gas.

from entering the premises of such person, by cutting off the service-pipes, or by such means as the said Company shall think fit, and recover the rent due from such person, together with the expenses of cutting off the gas, by action in any Court of competent jurisdiction.

10. In all cases in which the said Company are authorized to cut off and take away the supply of gas from any house or building or premises under the provisions of this Act, the said Company, their agents or workmen, after giving twenty-four hours' previous notice to the occupier, may enter into any such house, building, or premises, between the hours of nine in the forenoon and four in the afternoon, and remove and carry away any pipe, meter, fittings, or other works, the property of the said Company.

11. Any meter or fitting let for hire by the said Company shall not be subject to distress for rent or revenue or any rate due upon the premises where the same may be used, nor be taken in execution under any process of a Court of law or equity, or any proceeding in insolvency against the person in whose possession the same may be.

12. Every person who shall lay, or cause to be laid, any pipe to communicate with any pipe belonging to the said Company, without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the said Company is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the said Company or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or shall otherwise improperly use or burn the gas, or shall supply any other person with any part of the gas supplied to him by the said Company, shall forfeit to the said Company the sum of 50 rupees for every such offence, and also the sum of 20 rupees for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the said Company may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.

13. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the said Company for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the said Company, shall, for each such offence, forfeit to the said Company any sum not exceeding 50 rupees, in addition to the amount of the damage done.

14. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the said Company or under their control, shall pay such sum of money by way of satisfaction to the said Company for the damage done, not exceeding 50 rupees, as any Magistrate shall think reasonable.

15. If the said Company shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the said Company shall forfeit for every such offence a sum not exceeding 1,000 rupees; and they shall forfeit an additional sum not exceeding 500 rupees for each day during which such washing or other substance shall be brought or shall flow, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the said Company, by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby; and such penalties shall be paid to such last-mentioned person.

16. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the said Company, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the said Company shall not, within twenty-four hours next after service of such notice, effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall, for every such offence, forfeit the sum of 50 rupees for each day during which the gas shall be suffered to escape, after the expiration of twenty-four hours from the service of such notice.

17. Whenever any water shall be fouled by the gas of the said Company, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding 200 rupees, and a further sum not exceeding 100 rupees for each day during which the offence shall continue, after the expiration of twenty-four hours from the service of notice of such offence.

18. For the purpose of ascertaining whether such water be fouled by the gas of the said Company, the person to whom the water supposed to be fouled shall belong may dig up the ground, and examine the pipes, conduits, and works of the said Company: Provided that such person, before proceeding so to dig and examine, shall give twenty-four hours' notice in writing to the said Company of the time at which such digging and examination is intended to take place, and shall give the like notice to persons having the control or management of the road, pavement, or place where such digging is to take place, and they shall be subject to the like obligation of re-instating the said road and pavement, and the same penalties for delay, or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the said Company, for the purpose of laying their pipes.

19. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the said Company, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination, shall be paid by the said Company; but if, upon such examination, it appear that the water has not been fouled by the gas of the said Company, the person causing such examination to be made shall pay all such expenses, and shall also make good to the said Company any injury which may be occasioned to their works by such examination.

20. The amount of the expenses of every such examination and repair, and of any injury done to the said Company, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the manner prescribed for the ascertainment and recovery of expenses in section 7 of this Act.

21. Nothing in this Act contained shall prevent the said Company from being liable to an indictment for nuisance, or to any other legal proceedings to which they may be liable in consequence of making or supplying gas.

22. A copy of the original Deed of Association of the said Company, and of every other instrument registered under the said "Joint Stock Companies' Act, 1856," so constituting the regulations of the said Company, and a copy of every special resolution of a general meeting whereby any change shall have been, or at any time shall be, made in the regulations of the said Company, shall be kept at the office of the said Company in Calcutta, and shall there be open to the inspection of all persons during the usual hours of business of the said office; and a copy of such original Deed of Association, and of every other such instrument, and of every special resolution as aforesaid, shall also be deposited by the said Company as soon as it can be done after the passing of this Act, or after the making of any such special resolution hereafter to be made, in the office of the Registrar of Joint Stock Companies, or, if there be no such officer, in the office of the keeper of the records of the Supreme Court of Judicature at Fort William, and shall there be filed; and an examined copy of any such filed copy as aforesaid, certified by and under the hand of the Registrar of Joint Stock Companies, or of the keeper of the records of the said Supreme Court, shall be good and sufficient evidence of each such original deed, instrument, or special resolution, in all actions, suits, and proceedings whatsoever, whether civil or criminal, to be had in any Court of justice, or before any Magistrate, or Revenue or other officer, and whether acting judicially or in any proceeding preliminary to a judicial inquiry, throughout the territories of the East Indian Company.

23. All services of mesne or other process, and all notices whatsoever, which, by law or by the practice of any Court wherein the said Company shall sue or be sued, are required to be made, served, or given for any purpose what-

soever to the said Company, shall and may be made, served, and given, in addition to all ways and means by which the same may otherwise be legally made, served, and given, by leaving the same, addressed to the Managing Agent of the said Company, at the office in Calcutta of the said Company.

24. All penalties and forfeitures imposed by this Act, and all damages and expenses, the recovery of which is not specially provided for, may be recovered by summary proceeding before a Magistrate.

25. All penalties, forfeitures, damages, and expenses adjudged due under this Act, if the amount be not otherwise paid, may be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from such goods and chattels, after satisfying such amount and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained: or instead of proceeding by distress and sale, or in case of failure to realize by distress the whole or any part of any penalties, forfeitures, damages, or expenses imposed or incurred under the provisions of this Act, the person claiming such penalty, forfeiture, damage, or expenses, may sue the person liable to pay the same in any Court of competent jurisdiction.

26. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto; nor shall any such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

27. The following words and expressions used in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number.

Words importing the masculine gender shall include females.

The word "person" shall include a corporation, whether aggregate or sole.

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place.

The word "Magistrate" shall include any Magistrate of Police, and any Joint-Magistrate or other person lawfully exercising the powers of a Magistrate, acting at, or for, the place or district where the matter requiring the cognizance of any such Magistrate arises.

THE
INDIAN PENAL CODE
AND THE
CODE OF CRIMINAL PROCEDURE.

THE
INDIAN PENAL CODE,
BEING
ACT XLV. OF 1860,
ANNOTATED WITH
RULINGS OF THE HIGH COURTS IN INDIA,
AND SUPPLEMENTED WITH
A COPIOUS INDEX.

BY
D. E. CRANENBURGH,
PLEADER.

CALCUTTA:
PRINTED AND PUBLISHED BY D. E. CRANENBURGH,
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1882.

PRINTED AND PUBLISHED BY D. E. CRANENBURGH,
AT HIS "LAW-PUBLISHING PRESS,"
BOW BAZAR STREET.

P R E F A C E.

THE Indian Penal Code, as amended by Act VIII. of 1882, comes into force from the 1st January 1883.

In this edition all the amendments made up to the passing of Act VIII. of 1882 have been carefully embodied in their proper places.

The rulings of the High Courts in India have been taken from the Indian Law Reports, the Weekly Reporter, the Bengal Law Reports, and several other Reports.

To save reference to the Criminal Procedure Code (Act X. of 1882), outer marginal notes are inserted opposite each penal section, showing (1) by what Court each offence is triable ; (2) whether the police may arrest without warrant or not ; (3) whether a warrant or a summons shall ordinarily issue in the first instance ; (4) whether the offence is bailable or not ; and (5) whether it is compoundable or not.

D. E. CRANENBURGH.

Dec. 1, 1882.

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THE INDIAN PENAL CODE.

ACT NO. XLV. OF 1860.*

RECEIVED THE G.-G.'S ASSENT ON THE 6TH OCTOBER 1860.

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Preamble.

1. This Act shall be called **THE INDIAN PENAL CODE**, and shall take effect on and from the first day of January 1862† throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106, entitled “An Act for the better government of India,” except the Settlement of Prince of Wales’s Island, Singapore, and Malacca.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories on or after the said first day of January 1862.†

THE Courts of this country are empowered to try every person, admittedly a subject of the British Government, for acts committed by him, whether within or without the British territories in India, provided they amount together to an offence under the Penal Code (2 W. R. 60, 61). Accordingly the Calcutta High Court, under Act I. of 1849, confirmed the conviction of two persons for murder committed in the independent territory of Kúch Behár, they being British subjects, and only temporary residents of that State.—1 W. R. 39.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories, in the same manner as if such act had been committed within the said territories.

4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said first day of May 1861, within the

* See Acts XIV. and XXVII. of 1870, Act XIX. of 1872, and Act VIII. of 1882.

† See Act VI. of 1861.

dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been, or may hereafter be, made in the name of the Queen by any Government of India.

THE above section applies to servants of the Queen who commit offences against this Code within the dominions of any Prince or State in alliance with the Queen. The High Court can try a European British subject for any offence against this Code committed in the territories of a Native Prince in alliance with Government upon charges framed under this Code.—8 Bom. H. C. Rep. 92.

5. Nothing in this Act is intended to repeal, vary, suspend, or
 Certain laws not to be affected by this Act. affect any of the provisions of the Statute 3 and 4 William IV., Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty, or of any special or local law.

IT is illegal to punish an offender under both the Penal Code and a special law for the same offence.—5 N.-W. P. 49.

A CONVICTION under a special law (e.g., s. 29, Act V., 1861) should not be quashed merely because the facts would cover an offence punishable under the Penal Code.—4 R. C. C. R. 17.

WHERE facts proved constitute an offence under a special law, the conviction cannot be set aside on the ground that the same facts amount to an offence under this Code.—8 W. R., C. R., 55.

CHAPTER II.

GENERAL EXPLANATIONS.

6. Throughout this Code every definition of an offence, every
 Definitions in the Code to be understood subject to exceptions. penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(a.) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b.) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Every expression which is explained in any part of this Code
 Sense of expression once explained. is used in every part of this Code in conformity with the explanation.

8. The pronoun "he" and its derivatives are used of any person,
 Gender. whether male or female.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

10. The word "man" denotes a male human being of any age:
 "Man." "Woman." the word "woman" denotes a female human being of any age.

11. The word "person" includes any Company or Association, or
 "Person." body of persons, whether incorporated or not.

12. The word "public" includes any class of the public or any
 "Public." community.

13. The word "Queen" denotes the Sovereign for the time being
 "Queen." of the United Kingdom of Great Britain and Ireland.

14. The words "servant of the Queen" denote all officers or
 "Servant of the Queen." servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

15. The words "British India" denote the territories which are
 "British India." or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," except the Settlement of the Prince of Wales's Island, Singapore, and Malacca.

16. The words "Government of India" denote the Governor-
 "Government of India." General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

17. The word "Government" denotes the person or persons
 "Government." authorized by law to administer executive government in any part of British India.

18. The word "Presidency" denotes the
 "Presidency." territories subject to the Government of a Presidency.

19. The word "Judge" denotes not only every person who is
 "Judge." officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a.) A Collector exercising jurisdiction in a suit under Act X. of 1859 is a Judge.

(b.) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c.) A member of a pancháyat which has power, under Regulation VII., 1816, of the Madras Code, to try and determine suits, is a Judge.

(d.) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A pancháyat acting under Regulation VII., 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

First.—Every covenanted servant of the Queen;

Second.—Every commissioned officer in the military or naval forces of the Queen while serving under the Government of India, or any Government;

Third.—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a pancháyat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty;

A SUPERNUMERARY peon of the Collector's Court, who received no fixed pay, but was remunerated by fees whenever employed to serve process, was held to be a public servant.—Reg. v. Ramkrishna Das, 7 B. L. R. 447.

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

AN engineer who receives and pays to others municipal moneys is a public servant within the meaning of this clause, though he has not the power of sanctioning such expenditure.—Reg. v. Nantaram Uttaram, 6 Bom. C. C. 64.

Illustration.

A municipal commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

A PERSON appointed by the Government Solicitor, with the approval of Government, and under an arrangement made by the Governor-General in Council, to act as Prosecutor in the Calcutta Police Courts, is a public servant within the meaning of s. 21, Penal Code.—Empress v. Butto Kristo Doss, I. L. R., 3 Cal. 497.

THE manager of a Court of Wards estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. A poddar in the Bank demanded and took a reward for his trouble in receiving the money, and was prosecuted under s. 161, Penal Code : *Held* that, although the money might have been paid on behalf of Government, the money was received by the accused on behalf of the Bank, and not on behalf of the Government, and that he was a servant of the Bank only, and not a public servant within the meaning of s. 21, cl. 9.—*In re Modun Mohun*, I. L. R., 4 Cal. 376.

22. The words “moveable property” are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

23. “Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing “dishonestly.”

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

"Reason to believe."

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Property in possession of wife, clerk, or servant.

Explanation.—A person employed temporarily, or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

"Counterfeit."

Explanation.—It is not essential to counterfeiting that the imitation should be exact.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

"Document."

Explanation 1.—It is immaterial by what means, or upon what substance, the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A check upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

WHERE a draft petition was prepared with the intention of being used as evidence of a matter, it was held to fall within this section, and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469.—10 W. R., Cr., 61.

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

A COPY of a lease is not a valuable security within the meaning of this section.—Reg. v. Khushub Heraman, 4. Bom. Rep., Cr., 28.

A SETTLEMENT of accounts, though not signed, and containing no provision to pay, is a valuable security within the meaning of this section.—Reg. v. Kapalavaya Saraya, 2 Mad. H. C. Rep. 247.

A DEED of divorce is a "valuable security" within the meaning of this section. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471 of this Code.—Queen v. Azimuddin and another, 11 W. R., Cr., 15.

"A will."

31. The words "a will" denote any testamentary document.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. The word "act" denotes as well a series of acts as a single act : the word "omission" denotes as well a series of omissions as a single omission.

34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.*

THE following remarks of Sir Barnes Peacock, made in a case reported in 1 R. C. C. R. 43, clearly illustrates the meaning of the above section :—

"If the object and design of those who seized Amoordee was merely to take him to the thannah on a charge of theft, and it was not part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that when several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention.

"It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon.

"But if several persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design.

* See s. 1, Act XXVII., 1870.

"I do not know what the evidence was. All I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

AN American jurist (Bishop, § 439) thus explains the law upon the subject :—
 „The true view is doubtless as follows : Every man is responsible criminally for what of wrong flows directly from his corrupt intentions ; but no man, intending wrong, is responsible for an independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results. If he contemplated the result, he is answerable, though it is produced in a manner he did not contemplate. If he did not contemplate the result in kind, yet if it was the ordinary effect of the cause, he is responsible. If he awoke into action an indiscriminate power, he is responsible. If he gave directions vaguely and incautiously, and the person receiving them acted according to what might be presumed to have been his understanding of them, he is responsible. But, if the wrong done was a fresh and independent wrong springing wholly from the mind of the doer, the other is not criminal therein, merely because, when it was done, he was intending to be a partaker with the doer in a different wrong. These propositions may not always be applied readily to cases arising, yet they seem to furnish the true rules."

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(a.) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(b.) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c.) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally

omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40. Except in the chapter and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV. and in the following sections, namely, sections "64, 65, 66, 71,"* 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.†

"Special law." **41.** A "special law" is a law applicable to a particular subject.

"Local law." **42.** A "local law" is a law applicable only to a particular part of British India.

43. The word "illegal" is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Injury."

44. The word "injury" denotes any harm whatever, illegally caused to any person, in body, mind, reputation, or property.

* The figures quoted are added by Act VIII. of 1882, s. 1.

† See s. 2, Act XXVII., 1870.

"Life." 45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death." 46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal." 47. The word "animal" denotes any living creature, other than a human being.

"Vessel." 48. The word "vessel" denotes any thing made for the conveyance by water of human beings or of property.

"Year." "Month." 49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Section." 50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Oath." 51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith." 52. Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

Punishments.

53. The punishments to which offenders are liable under the provisions of this Code are—

First,—Death ;

Secondly,—Transportation ;

Thirdly,—Penal servitude ;

Fourthly,—Imprisonment, which is of two descriptions, namely ;

(1.) Rigorous, that is, with hard labour ;

(2.) Simple ;

Fifthly,—Forfeiture of property ;

Sixthly,—Fine.*

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

* See the Whipping Act (VI. of 1864).

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person, being a European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV. of 1855:

Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.*

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

A SENTENCE of ten years' transportation, or five years' rigorous imprisonment, may be passed under ss. 376 and 511 of this Code for an attempt to commit rape; but a sentence of seven years' rigorous imprisonment, commutable, under s. 59, to seven years' transportation, is illegal.—10 W. R. 10, Cr.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

A SENTENCE of transportation under ss. 59 and 412, Penal Code, cannot exceed ten years.—5 W. R. 16, Cr.

TRANSPORTATION can only be substituted for imprisonment when the offender is sentenced to at least seven years' imprisonment in one case.—Queen v. Tonooram Malee and others, 3 W. R. 44, Cr.

AN OFFICER exercising the powers described in s. 1, Act XV. of 1862, is competent, under s. 59, Penal Code, to commute a sentence of imprisonment into one of transportation.—9 W. R. 6 (F. B., Cr.).

WITH reference to ss. 59 and 377, Penal Code, when an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—I. L. R., 1 All. 43 (F. B., Cr.).

TO BRING this section into operation, the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation.—2 W. R. 1, Cr. ; 5 W. R. 44, Cr. ; 8 W. R. 2, Cr.

UNDER this section, a Court can sentence to transportation only where the offence is punishable with imprisonment for not less than seven years. It may, in passing sentence, commute the imprisonment to transportation, but cannot do so after the sentence of imprisonment has been passed.—W. R., Sp., Cr., 35 (2 R. J. P. J. 392).

IT is illegal to pass a sentence of transportation for a shorter period than seven years on any charge. Where, therefore, a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under s. 193, and forgery under s. 467, and sentenced to seven years' transportation for the first offence, and a further period of transportation for three years for the second, the second sentence was quashed as illegal.—8 W. R. 2, Cr.

A WAS convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under this section, to transportation for the same term. *Held* that, under ss. 376 and 511, Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term.—Queen v. Joseph Meriam, 1 B. L. R., Ap. Cr., 5.

60. In every case in which an offender is punishable with imprisonment

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. In every case in which a person is convicted of an offence for

Sentence of forfeiture of property.

which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

62. Whenever any person is convicted of an offence punishable

Forfeiture of property, in respect of offenders punishable with death, transportation, or imprisonment.

with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

WHERE a Sessions Judge, besides sentencing a zamindár to transportation for wrongfully keeping in confinement a kidnapped person, ordered the forfeiture of the rents and profits of his estate, the Calcutta High Court set aside the sentence as

too severe. Such a sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravating circumstances.—Queen v. Mahomed Akhir, alias Totah Meeah, 12 W. R. 17.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Amount of fine.

WHERE, under this Code, it is provided that an offender shall be punished with imprisonment, and shall also be liable to fine, it has been held that the sentence must include some period of imprisonment, even though it be for a moment, otherwise the sentence would be illegal.—1 Bom. H. C. 4, 34, 39; 4 Mad. II. C., App. xviii.

Sentence of imprisonment in default of payment of fine.

64. "In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

"and in every case of an offence punishable with fine only, in which the offender is sentenced to a fine,"* it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

THE above section applies to convictions under the Penal Code only. Therefore, where an accused person was convicted under s. 48 of Act XXIV. of 1859, and sentenced to pay a fine, or, in default, to be imprisoned, it was held that the award of imprisonment in default of payment of fine was irregular, the procedure being that laid down in Madras Act V. of 1865, and s. 64 of the Penal Code applying only to offences under this Code.—7 Mad. II. C. Rep., App. xxii.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

IN a case of assault, a sentence inflicting a fine of Rs. 50, and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss. 65 and 352, Penal Code.—Jehun Buksh, 16 S. W. R. 42, Cr.

A SUBORDINATE Magistrate of the first class can deal with offences provided for by a special law (in this case Act III. of 1863, B. C.), and sentence to imprisonment in lieu of fine for more than six weeks when the punishment awarded is fine only; s. 67, and not s. 65, Penal Code, being applicable to such a case.—10 W. R. 30, Cr.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Description of imprisonment for such default.

67. If the offence be punishable with fine only, "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and"† the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall

Imprisonment for non-payment of fine, when offence punishable with fine only.

* The clauses quoted have been substituted by Act VIII. of 1882, s. 2, for the words, "In every case in which an offender is sentenced to a fine."

† The words quoted have been inserted by Act VIII. of 1882, s. 3.

not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

IMPRISONMENT awarded in default of payment under this section must be simple.—5 Bom. H. C. Rep., C. C., 45.

WHERE an offence is punishable with both fine and imprisonment, or with fine only, and the Magistrate fines only, but awards imprisonment in default of payment, the term of imprisonment is regulated by s. 67, and not s. 65.—Reg. v. Chunder Pershad Singh, 10 W. R. 30, Cr.

A SUBORDINATE Magistrate of the first class can deal with offences provided for by a special law (in this case Act III. of 1863, B. C.), and sentence to imprisonment in lieu of fine for more than six weeks when the punishment awarded is fine only; s. 67, and not s. 65, Penal Code, being applicable to such a case.—10 W. R. 30, Cr.

68. The imprisonment which is imposed in default of payment

Imprisonment to terminate on payment of fine. of a fine shall terminate whenever that fine is either paid or levied by process of law.

THE successor of a judicial officer who sentenced an offender to pay a fine may levy it. Though the power of levying a fine is restricted to the Court sentencing the offender, yet the word "Court" is not restricted to the particular individual who held the office at the time the offender was sentenced.—Chunder Coomar Mitter v. Modhoosoodun Dey, 9 W. R. 50, Cr.

69. If, before the expiration of the term of imprisonment fixed in

Termination of such imprisonment upon payment of proportional part of fine. default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

A PRISONER was sentenced to imprisonment as well as to fine, commutable, in default, to a further term of imprisonment. A portion of the fine was paid, but the fact was not communicated to the jailor, and the prisoner underwent the full term of imprisonment. It was held that the Court had no power to order the fine to be refunded.—Reg. v. Natha Mula, 4 Bom. H. C. Rep., C. C., 37.

70. The fine, or any part thereof which remains unpaid, may be

Fine leviable within 6 years, or during imprisonment. levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to

Death not to discharge property from liability. the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

THE law makes provision for the distress and sale of moveable property, but not of immovable property, which cannot be proceeded against, even after the offender's death.—*Reg. v. Lallu Karwar*, 5 Bom. H. C. Rep., C. C., 63.

WHEN a Judge (or other officer) who sentences an offender to fine, and imprisonment in default of the fine, does not also direct levy of the fine by distress and sale if not paid, the successor of the Judge (or officer) may, under s. 61, Act XXV. of 1861, levy the fine by distress or sale within the time prescribed in s. 70, Penal Code.—9 W. R. 50 (F. B., Cr.).

WHERE a person has undergone imprisonment in default of payment of fine, he is not thereby exonerated from paying the fine (5 R. J. P. J. 37). This ruling is in accordance with the principle laid down by the Law Commissioners, who say: "We do not mean that this imprisonment shall be taken in full satisfaction of the fine; we cannot consent to permit the offender to choose whether he will suffer in his person or his property. . . . The imprisonment which an offender has undergone shall not release him from the pecuniary obligation under which he lies. His person will, indeed, cease to be answerable for the fine; but his property will, for a time, continue to be so."

71. Where anything which is an offence is made up of parts, any Limit of punishment of offence made up of several offences, of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."*

Illustrations.

(a.) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b.) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

WHERE a Court, in convicting prisoners of three separate offences, passed a single sentence of four years' rigorous imprisonment, it was held that the proper course would have been to give a separate sentence in each case, otherwise in case of an appeal and a reversal of the conviction in one or two of the cases it would be impossible to determine to what portion of the aggregate imprisonment the prisoners still remained liable.—4 Mad. H. C. Rulings, App. xxvii.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

* The clause quoted has been added by Act VIII. of 1882, s. 4.

PROOF of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under s. 72, Penal Code.—*Queen v. Palany Chetty*, 4 Mad. Rep. 51.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say:—

A time not exceeding one month if the term of imprisonment shall not exceed six months :

A time not exceeding two months if the term of imprisonment shall exceed six months and “shall not exceed a*” year :

A time not exceeding three months if the term of imprisonment shall exceed one year.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

75. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years.

THIS section only applies to convictions of offences committed after the Code came into operation.—4 W. R. 9, Cr.

THIS section only applies to previous convictions for the same offence or for an offence under the same chapter.—5 W. R. 66, Cr.

WHERE the subsequent offence is merely an attempt to commit an offence punishable under chap. 12 or 17, or an abetment of such an offence, the enhanced punishment cannot be awarded.—Mad. H. C., 1864.

WHERE the previous conviction was of an offence committed prior to the operation of the Penal Code, held that s. 75 of the Penal Code did not authorize enhanced punishment.—*Hurkishan v. The Crown*, Panj. Rec., No. 31 of 1868, Cr.

PENAL statutes must be strictly construed; and it would not be right to include chap. 23 of the Penal Code (relating to attempts) within the provision of s. 75 when that section only mentions other chapters of the Code.—21 W. R. 35, Cr.

* The words quoted have been substituted by Act VIII. of 1882, s. 5, for the words “be less than a.”

A SENTENCE of whipping cannot, with reference to s. 7. Act VI. of 1864, be passed on a conviction for theft under s. 379, Penal Code, in addition to transportation for life under s. 75 of the Code, s. 379 only providing for sentences of imprisonment for a term not exceeding 3 years.—21 W. R. 40, Cr.

WHERE a person commits an offence punishable under chap. 12 or 17, Penal Code, with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence under either of such chapters, he is not subject, on conviction of the second offence, to the enhanced punishment provided in s. 75.—I. L. R., 1 All. 637.

IF a person who has been convicted of an offence punishable, under chap. 12 or chap. 17 of the Indian Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code.—*Empress v. Náná Rahim*, I. L. R., 5 Bom. 140.

WHERE a first class Subordinate Magistrate sentenced a prisoner to six months' imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under s. 46 of the Code of Criminal Procedure (corresponding with ss 347, 349, Act X., 1882), the latter sentence was set aside by the High Court.—5 Mad. Rep. Rul. III.

ACCUSED was convicted in 1862 under s. 454 (chap. 17) of the Penal Code; again in 1864 of an offence against property (chap. 17); and a third time of an attempt to commit an offence under s. 456 of the Penal Code. For this last offence, he was sentenced to six years' imprisonment. *Held* that the offence being an attempt, and punishable under chap. 13 of the Code, s. 75 did not apply. Punishment reduced accordingly to eighteen months' imprisonment.—*Deva Singh v. The Crown*, Panj. Rec., No. 27 of 1872, Cr.

IT is only where a prisoner has undergone punishment awarded under chap. 12 or 17, and has afterwards committed a fresh offence punishable under either of the above chapters, that enhanced punishment can be awarded. This principle is based on the fact that the sentence already borne has had no effect in preventing a repetition of crime, and has, therefore, been insufficient as a warning. Thus, where a prisoner committed several offences, which were made the subject of several trials, the last trial taking place a few weeks after those preceding it, while the prisoner was still undergoing his sentence, it was held that such convictions could not be charged under s. 75.—1 R. C. and C. Cr. R. 60.

CHAPTER IV.

GENERAL EXCEPTIONS.

76. Nothing is an offence which is done by a person who is, or who
Act done by a person bound, or by mistake of fact believing himself bound, by law. by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(a.) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b.) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting
Act of Judge when acting judicially. judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

78. Nothing which is done in pursuance of, or which is warranted

Act done pursuant to the judgment or order of Court. by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

OFFICERS arresting under civil process judgment-debtors cited as witnesses are not protected under s. 78, Act XLV. of 1860.—3 W. R. 53, Cr.

THE above section does not protect persons acting beyond jurisdiction. The protection is *cumdo, morando, et redeundo* (5 R. J. P. J. 43). And so, where a bailiff, in executing a process against a judgment-debtor's moveable property, broke open the gate, it was held that the above section did not protect him.—3 R. C. C. R. 8.

THE arrest, under a civil process, of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court, and with some show of violence and contempt of Court, does not entitle the officer making the arrest to protection under this section.—Thakoordoss Nundy v. Shunkur Roy, 3 W. R. 53.

79. Nothing is an offence which is done by any person who is

Act done by a person justified, or by mistake of fact believing himself justified, by law.

justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

RAIYATS are not protected by this section for resistance to distraint of crops where the zemindar's people enter upon the crops with intention of distraining after notice under s. 116, Act X. of 1859.—23 W. R. 40, Cr.

80. Nothing is an offence which is done by accident or misfortune,

Accident in doing a lawful act.

and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Illustration.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Nothing is an offence merely by reason of its being done with

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a.) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b.) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

WHERE a person placed in his toddy-pots juice of the milk-bush, knowing that, if taken by a human being, it would cause injury, and with the intention of thereby detecting an unknown thief, who was in the habit of stealing his toddy, and the toddy was drunk by, and injured, some soldiers who had purchased it from an unknown vendor, it was held that he was rightly convicted under s. 328, and that s. 81 was no defence.—5 Bom. C. C. 59.

Act of a child under 7 years of age.

82. Nothing is an offence which is done by a child under seven years of age.

83. Nothing is an offence of a child above 7 and under 12, of immature understanding.

offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

In construing this section the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of notice as to justify the application of the maxim *malitia supplet aetatem*.—1 W. R. 43, Cr.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

THE fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84, Penal Code.—20 W. R. 40, Cr.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

DRUNKENNESS, though no excuse for crime, does not, in the eye of the law, make a crime the more heinous, and an act which, if committed by a sober man, is an offence, is equally an offence if committed by one when drunk, if the intoxication was voluntarily caused.—16 W. R. 36, Cr.

86. In cases where an act done is not an offence unless done with

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

THE following notes on the above section, taken from Starling's "Indian Criminal Law and Procedure," will be found useful :

"By the English law drunkenness is not any excuse for crime (Pearson's Case, 2 Lewin, C. C., 144). Still, by the practice of the Courts in England, it is constantly held that a person who is intoxicated may be incapable of having any intention, and thus the nature of an offence may be considerably reduced, though intoxication does not render him entirely punishable for the act he may have committed while under the influence of liquor. Thus, in a case of stabbing, where the prisoner used a deadly weapon, the fact that he was drunk does not at all alter the nature of the case ; but, if he had intemperately used an instrument not in its nature a deadly weapon at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time.—*Per Alderson, B., in Rex v. Meakin, 7 C. and P. 297.*

"Again, Parke, B., says that, if a man is drunk, this is no excuse for any crime he may commit ; but where provocation by a blow has been given to a person who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question whether he was excited by passion or acted from malice ; as, also, it may be on the question whether expressions used by the prisoner manifested a deliberate purpose, or were the idle expression of a drunken man.—*Rex v. Thomas, 7 C. and P. 817.*

"In a third case, Crowder J., laid it down that, though drunkenness is no excuse for crime, it may be taken into account by the jury when considering the motive or intent of a person acting under its influence.—*Reg. v. Gamlen, 1 F. and F. 90.*

"Where, on a trial of an indictment for an attempt to commit suicide, it appeared that the prisoner was, at the time of the commission of the alleged offence, so drunk that she did not know what she was doing, it was held that this negatived the intent to commit suicide.—*Reg. v. Moore, 3 C. and K. 312 ; 16 Jur. 750.*"

87. Nothing, which is not intended to cause death or grievous

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm ; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play ; and if A, while playing fairly, hurts Z, A commits no offence.

88. Nothing, which is not intended to cause death, is an offence

Act not intended to cause death, done by consent in good faith for person's benefit.

by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

THE benefit alluded to in this section must be some physical benefit, that is, the alleviation of some disease, or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another to castrate him, the operator is liable for the consequences of the emasculation. And in the case of *Reg. v. Baboobun Hijrah* (5 W. R. 7, Cr.), it was held that where a man of full age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed that a man might cause himself to be emasculated if he pleased.

89. Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person : Provided—

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

Provisoos.

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

Secondly.—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

WHERE a previous consent had been given, it was presumed to exist till rescinded. Thus, a wife, having requested her husband at different times to kill her, was killed by him while she was asleep, and consequently could not give consent. Here it was held that the act only was homicide by consent.—*Reg. v. Anunto Rumatag*, 6 W. R. 57, Cr.

THE consent must be free. Where a constable, having first placed chaukidars at the door, entered a woman's house, and had sexual intercourse with her, she first objecting, but subsequently consenting, it was held that he had committed rape, the plea of consent not being valid, as the chaukidars had barred the way, and thus prevented escape or rescue. The High Court thought that the Sessions Judge was wrong in directing the jury to find that the woman's consent, after a considerable struggle, rendered the charge of rape nugatory.—*Reg. v. Akbar Kazee*, 1 W. R. 21, Cr.

90. A consent is not such a consent as is intended by any section

Consent known to be given under fear or misconception.

of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. The exceptions in sections 87, 88, and 89, do not extend to

Exclusion of acts which are offences independently of harm caused.

acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may

Act done in good faith for the benefit of a person without consent.

cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. Provided—

Provisoes.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(a.) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b.) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c.) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d.) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

THE benefit alluded to in this section must be some physical benefit, that is, the alleviation of some disease, or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another to castrate him, the operator is liable for the consequences of the emasculation. And in the case of *Reg. v. Baboobun Hijrah* (5 W. R. 7, Cr.), it was held that where a man of full age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed that a man might cause himself to be emasculated if he pleased.

93. No communication made in good faith is an offence by reason

Communication made in good faith. of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder and offences against the State, punishable

Act to which a person is compelled by threats. with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it—is entitled to the benefit of this exception.

A PRISONER, in order to obtain the benefit of this section, must show that the act was done under fear of instant death. Therefore, persons giving false evidence under the alleged influence of a threat are not protected by this section.—*Reg. v. Sonoo*, 10 W. R. 48, Cr.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

THE pain caused by a blow across the chest with an umbrella was held not to be of such a trivial character as to come within s. 95, Penal Code, but to come under the definition of hurt in s. 319.—24 W. R. 67, Cr.

THE taking of almost valueless pods from a tree standing upon Government waste ground was held to fall within the above section. Such taking, therefore, did not amount to theft.—Reg. v. Kasya bin Ravji, 5 Bom. H. C. R. C. C. 35.

THE Law Commissioners, in framing the above section, state: "This section is intended to provide for those cases which, though from the imperfections of language they fall within the letter of the law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crime. That these ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the Judges to except them in practice."

OF THE RIGHT OF PRIVATE DEFENCE.

Things done in private defence.

Right of private defence of the body and of property.

96. Nothing is an offence which is done in the exercise of the right of private defence.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

THE accused, whose property had frequently been stolen, went, armed with a *lathi*, to watch his property, and with the *lathi* struck a thief, who died from the effects of the blow. *Held* (having regard to the nature of the injuries inflicted and the subsequent conduct of the accused) that the case did not fall within the 4th clause of s. 97, and that the prisoner was not guilty of culpable homicide not amounting to murder, being protected by ss. 97 and 104, he not having exceeded the legal right of private defence of property.—Reg. v. Mokee, 12 W. R. 15, Cr.

A, of Aligarh, obtained a decree against B and C, of Kashipur, for their share in certain property. A sent four men to take possession and plough the land, which was opposed by six men of Kashipur. A fight ensued, resulting in the death of one of the Kashipur men, caused by a blow inflicted by one of the Aligarh men. The Deputy Commissioner convicted the four Aligarh and five surviving Kashipur men of being members of an unlawful assembly, and of culpable homicide. *Held*, on appeal, that there was no common object on the part of the two factions, and therefore they did not jointly form an unlawful assembly under s. 141; that the Kashipur men merely exercised the right of private defence under s. 97; and that

the Aligarh men, being less than five in number, did not compose an unlawful assembly, but that the Aligarh man who struck the fatal blow was guilty of culpable homicide, and the rest of his party of abetting that offence.—*Kullan v. The Crown*, Panj. Rec., No. 13 of 1870, Cr.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication, of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(a.) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b.) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. First.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Second.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

Third.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Fourth.—The right of private defence in no case extends to the infliction of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

THIS section does not extend to the infliction of more harm than is absolutely necessary for the purpose of self-defence.—*Reg. v. Dhununjai Poly*, 14 W. R. 68, Cr.

WHERE a police-officer, not having a search-warrant, entered a house to search for stolen property, it was held that resistance to him was illegal, and not justifiable

on the ground of self-defence, as it was not shown that he was acting otherwise than in good faith and without malice.—*Reg. v. Vyankatray Shrinivas*, 7 Bom. H. C. Rep. 50.

ACCUSED being arrested at midnight, lurking armed in a village inhabited by persons well-known to the police as professional dacoits, *held* that his arrest was justifiable under s. 100 of Act XXV. of 1861. At the same time, if his arrest had not been strictly justifiable, the resistance which he offered was, under s. 99, Indian Penal Code, not in the exercise of a right of private defence.—*The Crown v. Gateea Meena*, Panj. Rec., No. 7 of 1869, Cr.

A head-constable, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased, had he released the gipsy he had unlawfully arrested and withdrawn himself and his subordinates, or had he effected his escape. *Held* that such head constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—*Empress of India v. Abdul Hakim*, I. L. R., 3 All. 253.

100. The right of private defence of the body extends, under the

When the right of private defence of the body extends to causing death.

restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly.—An assault with the intention of committing rape ;

Fourthly.—An assault with the intention of gratifying unnatural lust ;

Fifthly.—An assault with the intention of kidnapping or abducting ;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

WHERE a person, being attacked by another with a spear, strikes a blow with a *lati*, it has been held (1) that the right of private defence is not exceeded, and (2) that such right extends to the taking of life where grievous hurt is reasonably apprehended.—*Reg. v. Mohindin*, 11 W. R. 11, Cr. ; *Reg. v. Ram Lall Singh*, 22 W. R. 50, Cr.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

THE prisoner and the deceased met each other at a liquor-shop, and drank together. Afterwards they walked away together, a third person who had been drinking with them following them. In the way an altercation took place in respect of the deceased having, as alleged by the prisoner, caused the death of the prisoner's four children by incantations. According to the prisoner's account, the deceased admitted having done so, and added that he would also bring about the death of the prisoner; in short, that he would not allow him to leave the jungle alive, but would cause him to be taken and eaten by a tiger. Thereupon the prisoner stated that he killed the deceased with several blows of a heavy *lati*. It was held that the prisoner had no reasonable apprehension of danger to himself from the threats of the deceased, whom he killed; and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the second exception to s. 300.—Reg. v. Gobadur Bhooyaw, 13 W. R. 55, Cr.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

A PERSON in possession of land is legally entitled to defend his possession against another seeking to eject him by force.—Reg. v. Tulsi Singh, 2 B. L. R., Ap. Cr., 16; 10 W. R. 64, Cr.

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal the High Court held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—Reg. v. Guru Churn Chung, 6 B. L. R., App., 9; 14 W. R. 69, Cr.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

When such right extends to causing any harm other than death.

A PERSON in possession of land is legally entitled to defend his possession against another seeking to eject him by force.—Reg. v. Tulsi Singh, 2 B. L. R., Ap. Cr., 16 ; 10 W. R. 64, Cr.

WHERE A trespassed into B's house with the object of having intercourse with B's wife, and B and his friend C severely beat A, B was held justified under this section and s. 96 in so acting, and C was also acquitted as having aided in the commission of no offence.—Reg. v. Dhaumun Zeli, 20 W. R. 36, Cr.

IN investigating a case of land-dispute under ch. 22, Act XXV., 1861, the Magistrate found that one party was in possession ; but there being a charge against both parties of rioting under s. 147, he punished both parties. *Held* that the party in possession was protected by s. 104 in maintaining possession.—10 W. R. 64, Cr.

THE accused, whose property had frequently been stolen, went, armed with a *lati*, to watch his property, and with the *lati* struck a thief, who died from the effects of the blow. *Held* (having regard to the nature of the injuries inflicted and the subsequent conduct of the accused) that the case did not fall within the 4th clause of s. 97, and that the prisoner was not guilty of culpable homicide not amounting to murder, being protected by ss. 97 and 104, he not having exceeded the legal right of private defence of property.—Reg. v. Mokee, 12 W. R. 15, Cr.

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Commencement and continuance of the right of private defence of property.

105. First.—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Second.—The right of private defence of property against theft continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Third.—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

Fourth.—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth.—The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

THE right of private defence continues so long as the house-trespass continues. Thus, if a person follows a thief, and kills him after the house-trespass has ceased, he cannot plead the right of self-defence.—10 W. R. 9, Cr.

AN affray having taken place, both parties turned out armed with deadly weapons. Held that there was no right of private defence, as both parties well knew beforehand what was likely to happen.—3 R. C. C. R. 21.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.

OF ABETMENT.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

THERE can be no conviction for abetment of murder without proof of murder.—Queen v. Askur, W. R., 1864, Cr., 12.

PERSONS punished as principals cannot also be punished for abetment of the same offence.—Queen v. Ramnarain Josh, 4 W. R. 37, Cr.

As the offence of abetment under this Code is a substantive offence, the conviction of the abettor does not depend on the conviction of the principal.—Reg. v. Marutitada.—I. L. R., 1 Bom. 15.

It has been held that the offence of abetment by instigation depends upon the intention of the person abetting, and not upon the act done by the person abetted.—Reg. v. Inamdi Bhooyah, 21 W. R. 8, Cr.

WHERE a head-constable, knowing that certain persons were likely to be tortured, kept out of the way, it was held that he was guilty of abetment under s. 107 (cl. 3) and s. 109.—Reg. v. Bloodun Mooshur, 8 W. R. 78, Cr.

THE mere issue of hukam-náma (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—Queen v. Meajan and Obhoy Churn Doss, 4 W. R. 75, Cr.

WHERE A handed a *dáo* to B, who had made known his intention of coercing C, against whom he was acting, and B caused grievous hurt to C with this *dáo*, it was held that A was guilty of abetment under expl. 2 of s. 107.

WHERE a head-constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, he was held guilty of abetment under expl. 2, s. 107.—21 W. R. 11, Cr.

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder was quashed, because it was not distinctly shown that he preferred the charge *malá fide*.—Queen v. Muthoorá Pershad Panday, 2 W. R. 10, Cr.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, but not abetment of murder.—Queen v. Goluck Chung, 5 W. R. 75, Cr.

IN drawing up a charge of abetment, the section of the principal offence, and the section of this chapter (5) which the case covers, should be mentioned, with the circumstances which bring the offence under the particular section of this chapter.—1 W. R., Cr. L.

A PERSON can only be convicted of abetment of theft under the 1st explanation of s. 107, if he has procured, or attempted to procure, the commission of the theft. Mere subsequent knowledge of the offence is insufficient.—Queen v. Shumeruddeen, 2 W. R. 40, Cr.

KNOWING of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of the dacoity, does not amount to an abetment of the dacoity.—Queen v. Jhugroo, 4 W. R. 2, Cr.

A PRISONER was charged with abetting the issue of a false certificate of summons. The intention of the prisoner being the gist of the offence, and it being probable that he (a stranger in the village) had been himself deceived, he was acquitted.—Queen v. Hissamuddeen, 3 W. R. 37, Cr.

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick, and uses it, B (the master of A), who gives a general order to beat, is guilty of abetting the assault made by A.—Queen v. Rosoo Koollah, 12 W. R. 51, Cr.

AN omission to give information that a crime has been committed does not, under s. 107, amount to an abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed.—Queen v. Khadun Shaikh, 4 B. L. R., A. 7, Cr.

THE prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. Held that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.—*In re Audy Chetty*, 2 Mad. Rep., A. C., 438.

A PRISONER who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under cl. 3, s. 107, and s. 109, Penal Code, read together.—Queen v. Boodhun Misser, 8 W. R. 78, Cr.

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within s. 463 and s. 464, cl. 1, of the Penal Code.—*Queen v. Sookmoy Ghose*, 10 W. R. 23, Cr.

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393.

Held (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained.

Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it.

Per Elsmie, J., *contra*.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable.

Per Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there.

Held, further (*per* Plowden, J.)—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft) as opportunity should offer within a determinate area (as, for instance, a village), would not be bad as being too vague.—*Sher Ali v. The Empress*, Panj Rec., No. 18 of 1879, Cr.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(a.) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b.) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(a.) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b.) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c.) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable or knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d.) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A consorts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

Court by which offence abetted is triable. Cogn. if for offence abetted cogn.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(a.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b.) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c.) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison, and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

According as warrant or summons may issue for offence abetted.

According as offence abetted is bailable or not.

According as offence abetted is compoundable or not.

ACT XIV. of 1866 does not provide for the punishment of abetting an offence under that Act. Under s. 109, Penal Code, the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law.—*Queen v. Ramlugun Lall Moonshee and others*, 7 W. R. 54, Cr.

WHERE C falsely represented himself to be U, and the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, adduced C as U, and as the writer of that document: *Held* that T ought to have been convicted on a charge of abetting giving false evidence.—*Reg. v. Chundi Churn Nath*, 8 W. R. 5, Cr.

A PRISONER who consented to form one of party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under cl. 3, s. 107, s. 109, Penal Code, read together.—*Queen v. Boodlum Missar*, 8 W. R. 78, Cr.

A MAHOMEDAN guardian of a married female infant, who, while her husband is living, causes a ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under ss. 109 and 494, Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned.—*I. L. R.*, 4 Cal. 10.

LOODUN was in terms of intimacy with Marwareed, who encouraged his visits, and when Loodun's father sent him away with a view to break up the connection, the woman followed him. She was brought back, and Loodun returned and renewed the intimacy with her. He was prohibited from his father's house, and carried away things which he gave to the woman. Loodun was convicted by the Magistrate of house-trespass in order to commit theft, and Marwareed of abetment of that offence. *Held* that her conviction could not be sustained, as no act subsequent to the commission of an offence can be construed into an abetment.—*The Crown v. Loodun*, Panj. Rec., No. 11 of 1869, Cr.

A MEMBER of the caste of Ajanyá Rájput Guzars residing in Khándesh executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494, Penal Code, and that the priest who officiated at that marriage was an abettor under ss. 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.—*Empress v. Umi*, wife of Dhula, and seven others, *I. L. R.*, 6 Bom. 126.

THE accused were charged before a Magistrate of the first class with enticing away a married woman (s. 498). The enquiry having shown that an offence under

s. 494 had apparently been committed, the proceedings were forwarded under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X., 1882) for disposal to the Magistrate of the District, who tried the case *de novo*, and convicted the accused under ss. 109 and 494. *Held* that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to enquire into and try an offence falling under chap. xx. of the Penal Code, and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 494; and that the conviction was therefore illegal. *Held*, also, that the Magistrate before whom the complaint was made of an offence under s. 498 had jurisdiction to try it, and therefore that it was not competent for him to proceed under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X., 1882).—*Faiz Ahmed v. The Empress*, Panj. Rec., No. 5 of 1879, Cr.

ACCUSED was employed by the Panjáb Bank as its treasurer at Multán. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or *gunáshta*, himself removing to other employment at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain monies of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated money from D, and had connived at D's defalcation; and convicted him of criminal breach of trust as a servant, and of abetting the same. In appeal it was contended for the accused, *inter alia*, that he was treasurer only in name, and had no dominion over the misappropriated property; consequently he was not a participator in reference to D's defalcation, and as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. Found by the Chief Justice that both accused and D were servants of the Bank, that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that, although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who as the Bank's treasurer was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum, and had thereby abetted the breach of trust by a servant.—*Kaloo Ram v. The Crown*, Panj. Rec., No. 30 of 1868, Cr.

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393.

Held (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained.

Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it.

Per Elsmie, J., contra.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable.

Per Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there.

Held, further (per Plowden, J.)—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft) as opportunity should offer within a determinate area (as, for instance, a village), would not be bad as being too vague.—*Sher Ali v. The Empress*, Panj. Rec., No. 18 of 1879, Cr.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(a.) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(b.) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c.) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—*Queen v. Goluck Chung*, 5 W. R. 75, Cr.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

The following notes equally apply to ss. 110 and 111. Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not.

Offence abetted is compoundable or not.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of and punished for both the adultery and house trespass, as they were distinct offences; but that under the circumstances B's wife was by law incapable of committing abetment of the house-trespass.—*The Crown v. Sheikh Mungli*, Panj. Rec., No. 5 of 1871, Cr.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an effect caused by the act abetted different from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—*Queen v. Doorgessur Surmah*, 7 W. R. 97, Cr.

114. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

WHERE a number of persons come and forcibly carry off crops, they are, with reference to s. 114, all guilty of theft under s. 378, even though any of them took no part in the actual taking.—8 W. R. 59, Cr.

S. 114 (and not s. 149) of the Penal Code was held to apply to a case where, upon a charge of mischief by fire, the prisoner admitted that he was an abettor, and that he was present at the time the offence was committed.—*Queen v. Peer Mahomed*, 17 S. W. R. 52, Cr.

WHERE an abettor of an offence is charged under s. 114, it must be shown that he was present down to the commission of the offence. If he withdrew before the completion of the final act, the offence cannot be held to be committed under his continuing abetment.—*Reg. v. Amrita Govind*, 10 Bom. H. C. R., App. Cr. Ju., 497.

WHERE A aids B to murder Z, it has been held that A, if absent, renders himself liable to punishment as an abettor under s. 109; but, if present, he must be deemed to have committed the offence as if he had himself inflicted the fatal blow, though in point of fact another may have done it.—4 Mad. H. C. Rulings, March 8, 1869, xxxvii.

IN order to bring a prisoner within s. 114, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed.—*Queen v. Mussamut Niruni and Moniroodeen*, 7 W. R. 49, Cr.

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under s. 201, Penal Code.—*Queen v. Goburdhun Bera*, 6 W. R. 80, Cr.

115. Whoever abets the commission of an offence punishable with

Abetment of offence punishable with death or transportation for life, if offence not committed.

be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any

If act causing harm be done in consequence.

to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

II HAD for some time suspected his wife of criminal intrigue with R. K gave information that R and II's wife had arranged to meet at a certain place, to which II and K went together, the former armed with a stick, and where they caught II's wife and R in the act of committing adultery. II pursued R for about fifty paces, and then struck and killed him, afterwards turning upon his wife (who had been detained by K), and striking her; she escaped, severely beaten, but II, according to his own statement, believed he had mortally struck her. The Sessions Judge convicted II of murder and K of abetment of murder, and sentenced each to transportation for life. *Held* by the Chief Court that K was not guilty under the circumstances of any offence, and that II was guilty of culpable homicide not amounting to murder. K was ordered to be released, and the sentence upon II reduced to three years' rigorous imprisonment.—*Hussun v. The Crown*, Panj. Rec., No. 30 of 1872, Cr.

116. Whoever abets an offence punishable with imprisonment shall,

Abetment of offence punishable with imprisonment, if offence be not committed in consequence of abetment.

term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant,

If abettor or person abetted be a public servant whose duty it is to prevent offence.

that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. Not bailable. According as offence abetted is compoundable or not.

Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not.

Illustrations.

According as
offence abet-
ted is com-
poundable or
not,

(a.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b.) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c.) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d.) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

WHERE the accused was charged under s. 116 with abetment of an offence punishable under s. 161, the person abetted having been a civil surgeon of a sudder station : *Held* that the enhanced punishment prescribed by the latter part of s. 116 could not be awarded, as the civil surgeon was not a public servant within the meaning of that section.—21 W. R. 9, Cr.

THE accused was convicted by the Magistrate of abetting the kidnapping of a minor. The accused, not knowing that the minor had left home without the consent of her parents, and at the instigation of K, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and K previous to the completion of the kidnapping by the latter : *Held* by the High Court that so long as the process of taking the minor out of the keeping of her lawful guardian continued, the offence of kidnapping may be abetted, and that, in the present case, the conviction should be of an offence punishable under ss. 363 and 116, Penal Code.—1 L. R., 1 Mad. 173, Cr.

Court by
which offence
abetted is tri-
able.

Cog. if for of-
fence abetted
cog.

According as
warrant or
summons

may issue for
offence abet-
ted.

According as
offence abet-
ted is bailable
or not.

According as
offence abet-
ted is com-
poundable or
not.

117. Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of an adverse set while engaged in a procession. A has committed the offence defined in this section.

Court by
which offence
abetted is tri-
able.

Cog. if for of-
fence abetted
cog.

According as
warrant or
summons

may issue for
offence abet-
ted.

Not bailable.

According as

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years ; or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years ; and in either case shall also be liable to fine.

Concealing a design to commit an offence.

Punishable with death or transportation for life—

commit such offence, or

If offence committed ;

If not committed.

of either description for

extend to three years ; and in either case shall also be liable to fine.

that he will thereby facilitate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years ; or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years ; and in either case shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is not punishable under this section.

It is not necessary under s. 194, Penal Code, that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police-officer, would amount to the offence of giving false evidence as defined by s. 191 taken together with s. 118.—20 W. R. 41, Cr.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence* be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence† be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Public servant concealing design to commit offence which it is his duty to prevent—

act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence† be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.*

Public servant concealing design to commit offence which it is his duty to prevent—

act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence† be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.*

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence* be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence† be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Concealing design to commit offence punishable with imprisonment—

act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence† be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.*

* Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. Not bailable. According as offence abetted is compoundable or not.

† Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

According as the offence abetted is commensurable or not, the offence, for a term which may extend to one-fourth, and if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death or transportation for life, and shall forfeit all his property.

Waging, or attempting to wage, war, or abetting waging of war, against Queen.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

Illustrations.

(a.) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b.) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

121A. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.*

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

123. Whoever, by any act or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

124. Whoever, with the intention of inducing or compelling the

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any

manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

124A. Whoever by words, either spoken or intended to be read, or

Exciting disaffection.

by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall

be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.*

125. Whoever wages war against the Government of any Asiatic

Waging war against Asiatic power in alliance with Queen.

power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with

transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

126. Whoever commits depredation, or makes preparations to com-

Committing depredation on territories of power at peace with Queen.

mit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description

for a term which may extend to seven years, and also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

127. Whoever receives any property, knowing the same to have

Receiving property taken by war or depredation mentioned in sections 125, 126.

been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

* See s. 5, Act XXVII., 1870.

description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Ct. of Ses.

Uncog.

Warrant.

Not bailable.

Not comp.

128. Whoever, being a public servant, and having the custody of

Public servant voluntarily allowing prisoner of State or war in his custody to escape.

any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,

Presy. Mag.,

or Mag. of

1st class.

Uncog.

Warrant.

Bailable.

Not comp.

129. Whoever, being a public servant, and having the custody of

Public servant negligently suffering prisoner of State or war in his custody to escape.

any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.

Uncog.

Warrant.

Not bailable.

Not comp.

130. Whoever knowingly aids or assists any State prisoner or pri-

Aiding escape of, rescuing, or harbouring such prisoner.

soner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the re-capture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

Ct. of Ses.

Cognizable.

Warrant.

Not bailable.

Not comp.

131. Whoever abets the committing of mutiny by an officer,

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

soldier, or sailor, in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty,

shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words "officer" and "soldier" include any person subject to the Articles of War for the better government of Her Majesty's army, or to the Articles of War contained in Act No. V. of 1869.*

* See s. 6, Act XXVII., 1870.

- 132.** Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the army or navy of the Queen, shall, if mutiny be committed in consequence thereof, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- Abetment of mutiny, if mutiny is committed in consequence thereof.*
- Ct. of Ses. Cognizable. Warrant. Not bailable, Not comp.*
- 133.** Whoever abets an assault by an officer, soldier, or sailor, in the army or navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.
- Abetment of assault by soldier or sailor on his superior officer, when in execution of his office.*
- Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable, Not comp.*
- 134.** Whoever abets an assault by an officer, soldier, or sailor, in the army or navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- Abetment of such assault, if the assault is committed.*
- Ct. of Ses. Cognizable. Warrant. Not bailable, Not comp.*
- 135.** Whoever abets the desertion of any officer, soldier, or sailor, in the army or navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Abetment of desertion of soldier or sailor.*
- Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.*
- 136.** Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, or sailor, in the army or navy of the Queen, has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Harbouring deserter.*
- Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.*
- Exception.*—This provision does not extend to the case in which the harbour is given by a wife to her husband.
- 137.** The master or person in charge of a merchant-vessel, on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.
- Deserter concealed on board merchant-vessel through negligence of master.*
- Presy. Mag. or Mag. of 1st or 2nd class. Unco. Summons. Bailable. Not comp.*
- 138.** Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor, in the army or navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
- Abetment of act of insubordination by soldier or sailor.*
- Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.*
- 139.** No person subject to any Articles of War for the army or navy of the Queen, or for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.
- Persons subject to Articles of War.*

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

140 Whoever, not being a soldier in the military or naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or,

Second.—To resist the execution of any law or of any legal process; or,

Third.—To commit any mischief or criminal trespass, or other offence; or,

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or,

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

Held that the act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—5 Mad. Rep. Rul. VI.

No charge of being members of an unlawful assembly under s. 141 can be sustained when the intention of the parties was, not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—23 W. R. 25, Cr.

SEVERAL persons, some armed with sticks, and others not so armed, were members of an unlawful assembly. One of those not so armed picked up a stick, and used it. B, his master, who gave a general order to beat, was held to be guilty of abetting the assault committed by such a one.—12 W. R. 51, Cr.

It is irregular, where two opposite factions commit a riot, to treat both parties as constituting one unlawful assembly, and to try them together, as they had not one common object within the meaning of s. 141. Each party should be committed for trial and tried separately.—Reg. v. Durzoolla, 9 W. R. 33, Cr.; Reg. v. Surroop Chunder Paul, 12 W. R. 75, Cr.

THE use of any force, however slight, by a member of an unlawful assembly, constitutes rioting. An assembly of five or more persons, with any one of the common objects enumerated in s. 141, is an unlawful assembly, whether the object is in their mind when they came together, or whether it occurs to them afterwards.—*Koura Khan v. The Crown*, Panj. Rec., No. 34 of 1868, Cr.

WHERE the defendants, raiyats of a portion of a zamindári sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the raiyats were assembled in such numbers and so armed that nothing could be done against them : *Held* by the High Court that the acts of the defendants did not amount to an offence under s. 141.—4 Mad. Rep. Rul. LXV.

A, of Aligarh, obtained a decree against B and C, of Kashipur, for their share in certain property. A sent four men to take possession and plough the land, which was opposed by six men of Kashipur. A fight ensued, resulting in the death of one of the Kashipur men, caused by a blow inflicted by one of the Aligarh men. The Deputy Commissioner convicted the four Aligarh and five surviving Kashipur men of being members of an unlawful assembly, and of culpable homicide. *Held*, on appeal, that there was no common object on the part of the two factions, and therefore they did not jointly form an unlawful assembly under s. 141 ; that the Kashipur men merely exercised the right of private defence under s. 97 ; and that the Aligarh men, being less than five in number, did not compose an unlawful assembly, but that the Aligarh man who struck the fatal blow was guilty of culpable homicide, and the rest of his party of abetting that offence.—*Kullan v. The Crown*, Panj. Rec., No. 13 of 1870, Cr.

THE accused had occasion to enter a certain village on lawful business, and had reason to believe that an attack would be made upon him by a hostile party to prevent his carrying out such business. To protect himself, the accused entered the village accompanied by forty armed men. The hostile party, which was numerous, came out to watch his movements ; and the accused and his men, believing (as they alleged) that an immediate attack was intended by the opposite faction, assaulted the latter, and wounded several of them. *Held* that, even if the accused and his party acted under the belief alleged, yet as they knew that an attack was likely to be made upon them, the preparations made to secure the entry into the village, being in themselves provocative, amounted to a show of criminal force, and were not covered by the right of private defence ; and that therefore the accused and his party constituted an unlawful assembly under s. 141, and the violence used by them supported a charge of rioting under s. 146.—*Alladad v. The Crown*, Panj. Rec., No. 1 of 1870, Cr.

142. Whoever, being aware of facts which render any assembly

Being member of unlaw- an unlawful assembly, intentionally joins that
ful assembly. assembly, or continues in it, is said to be a
member of an unlawful assembly.

To convict a prisoner of being a member of an unlawful assembly, and of culpable homicide not amounting to murder, it must be shewn that he had an illegal object in common with, and took part in, the illegal act done by others.—*Foiz Ali (alias Imdad Ali) and others*, 1 W. R. 20, Cr.

143. Whoever is a member of an unlawful assembly shall be

Punishment.	punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.	Any Mag. Cognizable. Summons. Bailable. Not comp.
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AN assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—*Queen v. Khemee Singh and others*, 1 W. R. 19, Cr.

WHERE a number of persons resisted an attempt to search a house, made by an officer who had no written authority for the purpose, it was held that such persons were not punishable under this section.—7 N. W. P. 209.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A SENTENCE for being members of an unlawful assembly under s. 144 renders unnecessary separate sentences for house-trespass and mischief under ss. 448 and 427.—3 W. R. 54, Cr.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

THE offences of rioting and causing hurt are distinct offences, and are separately punishable under ss. 147 and 323.—I. L. R., 2 All. 139.

It is illegal to convict of both "rioting" and being "members of an unlawful assembly." The greater charge includes the less, and therefore to punish under both sections would be cumulative and illegal.—1 W. R. 7, Cr.

WHERE persons were found guilty of rioting, it was held that they might, if the circumstances warranted, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—3 Il. C. R. N. W. 174.

WHERE a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressive party. In the absence of any proof that they exceeded their duty, the police were held to be entitled to the protection of the Court.—8 W. R. 36, Cr.

WHERE certain parties, in the course of a sudden quarrel, committed an affray, resulting in grievous hurt and consequent death, it was held that as there was no unlawful assembly, there could not be a conviction for rioting, but for affray only. The question whether any of the prisoners were guilty of culpable homicide was not considered by the Court.—Reg. v. Phoollee Misser, 12 W. R. 72, Cr.

A PARTY in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. Therefore, where there was a charge against both parties of rioting under s. 147, and both were convicted and punished, the High Court quashed the conviction, holding that the party in possession was protected by s. 104, Penal Code.—Queen v. Tulsi Sing and others, 2 B. L. R., Ap. Cr., 16; 10 W. R. 64, Cr.

A DISMISSAL by one Court of a charge of riot against A may be a bar to A's trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal. The dismissal by one Court of the charge of riot instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences.—6 W. R. 51, Cr.

A RIOT having taken place, both parties turned out armed with deadly weapons. It was held that, as both parties knew very well what was likely to take place, neither party could plead the right of private defence. Where land was already sown with corn, an indigo-factory had no right to attempt forcibly to sow indigo in it, although it was indigo-contract land; and villagers had no right to oppose such forcible sowing by force, inasmuch as the police-station was close by.—*Reg. v. Jeolull, Rampertaub, and Sookum*, 3 R. C. C. Cr. 21, and 2 Mad. Jur. 168.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CERTAIN persons committed the offence of rioting armed with deadly weapons under s. 148; and also stabbed the person on whose premises the riot took place. *Held* that the latter offence should be punished separately under s. 324.—3 R. C. C. R. 34.

WHERE an unlawful assembly (party A) attacked party B, who were in occupation of land, to drive them off the land by force, and one of the members of party A fired a gun and killed one of the persons in party B in consequence of a sudden and unexpected resistance offered by party B, the persons composing party A (except the person who fired the gun) were held guilty, not of murder under s. 149, but of rioting under s. 148.—20 W. R. 5 (F. B., Cr.). See also 24 W. R. 66, Cr.

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal the High Court held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—*Reg. v. Guru Churn Chung*, 6 B. L. R. App. 9; 14 W. R. 69, Cr.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

IT is essential under the above section to state the common object of the unlawful assembly, in prosecution of which an offence was committed by one member, so as to render all liable to such offence.—1 R. C. C. R. 3.

WHERE a person was killed by a member of an unlawful assembly, in prosecution of the common object of that assembly, the common object being the abduction of that person's mother, it was held that all those who were members of the assembly at the time such person was killed were guilty of the offence of killing her.—In the matter of *Golam Arfin* and others, 4 B. L. R. 49, Ap.

A LARGE body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. *Held* by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder.—*Queen v. Kabil Caze* and others, 3 B. L. R. App. 1, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Bailable.
Not comp.

Court by
which offence
is triable.
According as
arrest may be
made without
warrant for
offence or not.
According as
warrant or
summons
may issue for
offence.
According as
offence is
bailable or
not.
Not comp.

HELD (Ainslie, J., dissenting) that s. 149 is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 149, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object.

Per Jackson, J.—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149.

Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence that the persons composing party A other than the person who fired the gun could not be convicted of murder under s. 149. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148, Penal Code.—*Reg. v. Sabid Ali and others*, 20 W. R. 5, Cr.; 11 B. L. R. 347.

Court by
which offence
is triable.
Cognizable.
Warrant or
summons,
according to
offence com-
mitted by
person hired,
&c.
According as
offence is
bailable or
not.
Not comp.

150. Whoever hires, or engages or employs, or promotes or connives at the hiring, engagement, or employment of, any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Bailable.
Not comp.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in conse-

quence of such provocation, be punished with imprisonment of either

If rioting be committed ; description for a term which may extend to
 offence of rioting be not committed, with imprisonment of either de- Any Mag. Cognizable. Summons. Bailable. Not comp.
 scription for a term which may extend to six
 months, or with fine, or with both.

If not committed.

154. Whenever any unlawful assembly or riot takes place, the owner Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.
 Owner or occupier of land on which an unlawful assembly is held. or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

A ZEMINDAR is not liable, under s. 155, for a sudden and unpremeditated riot which there is no reason to suppose he could have anticipated or thought likely to happen.—3 W. R. 54, Cr. Nor under s. 154.—12 W. R. 75, Cr.

THE following procedure should be observed in the case of a charge under s. 154 against the owner of land on which an unlawful assembly is held :—The charge ought to be a clear and distinct charge of the offence specified in s. 154. After such charge the prisoner should be called on to plead, and if his plea is not guilty, then legal evidence for the prosecution should be gone into. The records of another case would not of themselves be legal evidence itself for the conviction. This separate evidence in support of the charge under s. 154 being given, and a *prima-facie* case being made out for the prosecution, the prisoner must then be allowed opportunity to rebut that evidence, after which judgment should be passed. —C. G. D. Betts and Mahomed Ismail Chowdhry, Petitioners, 15 W. R. 6, Cr.

155. Whenever a riot is committed for the benefit or on behalf of Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.
 Liability of person for whose benefit a riot is committed. any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

A ZEMINDAR is not liable, under s. 155, for a sudden and unpremeditated riot which there is no reason to suppose he could have anticipated or thought likely to happen. —3 W. R. 54, Cr. Nor under s. 154.—12 W. R. 75, Cr.

THE mere fact that a person is the owner or occupier of land, in respect of which, or upon which, a riot takes place, is not sufficient to raise a presumption against him. It must be positively proved that he or his agent or manager knew or had reason to believe that the riot would be committed, and, having that knowledge or belief, did not use all lawful means in his power to prevent, disperse, or suppress it.—12 W. R. 75.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both; and whoever, being so engaged or hired as aforesaid, goes armed, or engages,

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Bailable.
Not comp.

Or to go armed. or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Any Mag.
Uncog.
Summons.
Bailable.
Not comp.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

WHERE certain parties, in the course of a sudden quarrel, committed an affray, resulting in grievous hurt and consequent death, it was held that as there was no unlawful assembly, there could not be a conviction for rioting, but for affray only. The question whether any of the prisoners were guilty of culpable homicide was considered by the Court.—*Reg. v. Phoollee Missar*, 12 W. R. 72, Cr.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.*

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Summons.
Bailable.
Not comp.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward

* Act XXXI., 1867, declares railway servants to be public servants.

for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant."—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(a.) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b.) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or a reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c.) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

UNDER the above section a charge should be so framed as to deal with separate motives in separate heads.—5 R. J. P. J. 138.

A PERSON who in fact, though wrongly, discharges the duties of an office whereby he is to all appearance a public servant, may, as such, be tried for receiving an illegal gratification under s. 161.—16 W. R. 27, Cr.

THE taking of a gratification by a sarishtadár to influence a Principal Sadr Amin in his decision is sufficient to a legal conviction, whether the sarishtadar did or did not influence the Principal Sadr Amin.—Queen v. Kaleechurn Sarishtadar, 3 W. R. 10, Cr.

A PERSON who accepts, for himself or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162.—Queen v. Obhoy Churn Chuckerbutty and Nobin Churn Chuckerbutty, 3 W. R. 19.

IN sanctioning a charge against a public servant, the local Government has power (1) to direct the person by whom, and the manner in which, the prosecution

is to be prepared and conducted; and (2) to appoint a specified tribunal, having jurisdiction, to try the accused.—*Reg. v. Vina'yuk Diva'kar*, 8 Bom. H. C. R. 32.

WHERE the accused was charged, under s. 116, with abetment of an offence punishable under s. 161, the person abetted having been a civil surgeon of a sudder station: *Held* that the enhanced punishment prescribed by the latter part of s. 116 could not be awarded, as the civil surgeon was not a public servant within the meaning of that section.—21 W. R. 9, Cr.

A PEON of a Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special sub-registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. *Held* that the peon was a public servant under the definition of cl. 9, s. 21.—7 W. R. 447.

THE manager of a Court of Wards estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. A poddar in the Bank demanded and took a reward for his trouble in receiving the money, and was prosecuted under s. 161: *Held* that although the money might have been paid on behalf of Government, the money was received by the accused on behalf of the Bank and not on behalf of Government, and that he was a servant of the Bank only, and not a public servant within the meaning of s. 21, cl. 9.—1. L. R. 4, Cal. 376.

K, a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161, but as dastoorce: *Held* that K was not, under these circumstances, punishable under s. 161, but under s. 165.—1. L. R., 1 All. 530.

WHEN any Judge, or any public servant not removable from his office without the sanction of the Government of India or the local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government. Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.—Act X. of 1882, s. 197.

THE accused was charged with having received illegal gratification from C. and Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C. and Co. were doing business as commissariat contractors, and the accused was the manager of the Commissariat Office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from C. and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act.

Held, per Garth, C.J. (Maclean, J., concurring).—The evidence was not admissible under s. 14.

Per Garth, C.J.—Section 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling.

Per Mitter, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876.—*The Empress v. M. J. Vyapoory Moodeliar*, 1. L. R., 6 Cal. 655.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking gratification, in order, by corrupt or illegal means, to influence public servant.

Ct. of Ses.
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Summons.
Bailable.
Not comp.

A PERSON who accepts, for himself or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant, to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162.—*Queen v. Obhoy Churn Chuckerbutty and Nobin Chunder Chuckerbutty*, 3 W. R. 19, Cr.

A CONVICTION on a charge of attempting to receive a gratification for influencing a public servant in the exercise of his public functions is illegal as disclosing no legal offence when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions.—*Queen v. Setul Chunder Bagchee*, 3 W. R. 69, Cr.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Taking gratification for exercise of personal influence with public servant.

Presy. Mag.
or Mag. of 1st
class.
Uncog.
Summons.
Bailable.
Not comp.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust; are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of offences above defined.

Ct. of Ses.
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Summons.
Bailable.
Not comp.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

165. Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection, with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a.) A, a Collector, hires a house of Z, who has a settlement-case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b.) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c.) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

K, a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161, but as *dustoorree*: *Held* that K was not, under these circumstances, punishable under s. 161, but under s. 165.—*L. R.*, 1 All. 530.

THE accused was charged with having received illegal gratification from C. and Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C. and Co. were doing business as commissariat contractors, and the accused was the manager of the Commissariat Office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from C. and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act.

Held, per Garth, C.J. (Maclean, J., concurring).—The evidence was not admissible under s. 14.

Per Garth, C.J.—Section 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling.

Per Mitter, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876.—*The Empress v. M. J. Vyapoory Moodeliar*, *I. L. R.*, 6 Cal. 655.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause, injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying law, with intent to cause injury to any person.

Presy. Mag. or Mag. of 1st or 2nd class. Uncoo. Summons. Bailable. Not comp.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing an incorrect document with intent to cause injury.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncoo. Summons. Bailable. Not comp.

ACCUSED, a village-patwari, prepared an incorrect copy of an entry in his *roznamcha* for S, plaintiff in a civil suit. The entry related to a contract between S and another. Accused was convicted, under s. 167, of framing an incorrect document, as a public servant. *Held* (per Lindsay, J.) that the conviction was right.—*Hira Singh v. The Crown*, Panj. Rec., No 32 of 1872, Cr.

ACCUSED, a copyist in the Small Cause Court office, framed an incorrect copy of a document filed with a certain record, by adding a name not contained in the original. The incorrect copy was delivered duly certified to one L D, the applicant for it, and who was probably in collusion with the copyist. This copy was afterwards made use of in a suit against the person whose name had been fraudulently added, and then the fraud was detected. The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Rs. 100. *Held* that s. 167 was not applicable to the case, as it was not shown that accused intended or knew it to be likely that he would cause injury to any person, but that the accused had committed the offence of "issuing or signing a false certificate" within the meaning of s. 197. *Held* also (per Barkley, J.) that making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s. 167.—*The Crown v. Deiva Singh*, Panj. Rec., No. 15 of 1879, Cr.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully engaging in trade.

Presy. Mag. or Mag. of 1st class. Uncoo. Summons. Bailable. Not comp.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Public servant unlawfully buying or bidding for property.

Presy. Mag. or Mag. of 1st class. Uncoo. Summons. Bailable. Not comp.

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was held that the Magistrate should have proceeded under s. 19, Act I., 1871, taken with s. 169, Penal Code, and that the accused could not be convicted under s. 406, Penal Code, of criminal breach of trust.—*Queen v. Raj Kristo Biswas*, 16 W. R. 52, Cr.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Any Mag.
Uncog.
Summons.
Bailable.
Not comp.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

AN accused person, against whom a proclamation has been issued, must, until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf.—*Queen v. Bissessur Pershad*, 2 N. W. P. 441.

A WARRANT addressed to a police-officer to apprehend an offender, and to bring him before the Magistrate, is not "a summons, notice, or order" within the meaning of s. 162; and the offence of absconding by an offender against whom a warrant has been so issued is not punishable under that section.—5 W. R. 71, Cr. See also 9 W. R. 70, Cr.

IT is illegal to punish a person under s. 172 for absconding to prevent the execution of a warrant issued against him, as a warrant is neither a summons nor a notice, but is addressed to the officer required to execute it, not to the person whose attendance is required.—*Mad. H. C. Rulings*, April 21, 1866; 7 N. W. P. 302; 1 C. C. R. 16.

EXCEPT as provided in ss. 477, 480, and 485 (of Act X. of 1882), no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in s. 195 (of Act X. of 1882), when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding. Nothing in s. 476 or s. 482 (of Act X. of 1882) shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.—Act X. of 1882, s. 487.

S. 195 of the new Code of Criminal Procedure (Act X. of 1882) lays down : “No Court shall take cognizance of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate. . . . The sanction referred to in this section may be expressed in general terms, and need not name the accused person ; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed. When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.”

173. Whoever in any manner intentionally prevents the serving of any summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ; or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding, or preventing publication thereof.

Presy. Mag. or Mag. of 1st or 2nd class. Uncoog. Summons. Bailable. Not comp.

A REFUSAL to give a receipt for a summons is not an offence under s. 173.—I. L. R., 3 Cal. 621.

WHERE an accused person refused to sign a summons intended to be served upon him, it was held that such refusal did not constitute the offence of intentionally preventing the service of summons upon himself.—Reg. v. Kalyabin Fakir, 5 Bom. H. C. Rep. C. C. 34.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to an order from a public servant, to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ; or, if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with

Any Mag. Uncoog. Summons. Bailable. Not comp.

simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(a.) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b.) A, being legally bound to appear before a Zila Judge, as a witness, in obedience to a summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

WHERE a person disobeyed a proclamation, it was held that he was punishable under s. 174.—R. C. C. R. 61, Cr.

A PERSON summoned as a juror to attend a criminal trial, and neglecting to attend, is punishable under s. 174.

UNDER ss. 172 to 174 it must be shown that the officer is competent to issue the summons, notice, or order.—5 Bom. H. C. 33, Cr.

UNDER s. 174 a Magistrate is competent to take cognizance of an offence committed against his own Court.—Queen v. Gugun Misser, 8 W. R. 61, Cr.

A MAGISTRATE having jurisdiction over any offence may issue his summons to a witness beyond the local limits of his jurisdiction.—3 Mad. H. C. Rul. 5.

BEFORE convicting a person under s. 174, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so.—Shib Pershad Chuckerbutty, Petitioner, 17 W. R. 38, Cr.

A SUB-MAGISTRATE convicted certain persons, under s. 174, of disobedience to summonses issued by him as tahsildar. *Held* that the convictions under the first part of s. 174 were sustainable.—6 Mad. Rep. Rul. xlv.

WHERE certain arbitrators in a civil suit were summoned to attend Court on a specified date, but refused to obey the summons, it was held that they could not be convicted under s. 174, as the summons served on them was not a process provided by law.—6 Panj. Rec. 1.

A SUBORDINATE Magistrate has no power to try an offence punishable under s. 174 committed against his own Court, but is bound to send the case, if in his opinion there is sufficient ground, for investigation to a Magistrate having power to try or commit for trial.—Queen v. Chandra Sekhar Roy, 5 B. L. R. 100.

A MAHALKARI, invested with the powers of a second-class Subordinate Magistrate, cannot issue a summons under s. 8 of Act XI. of 1843. Consequently a person cannot be convicted under s. 174, Penal Code, for having disobeyed a summons so issued.—Reg. v. Venkaji Bhaskar, 8 Bom. H. C. Rep. C. C. 19.

WHERE a person is not legally competent to issue an order for attendance before himself, it has been held that disobedience to such order is not an offence punishable under s. 174. Thus, the Chairman of a Municipal Commission, appointed under Act XXVI. of 1850, is not competent, though a public servant, to direct, as such, a person to attend before him.—Reg v. Burshotam Valji, 5 Bom. H. C. Rep. C. C. 33.

A WITNESS was summoned by a Judge of a Small Cause Court to attend on a certain day to give evidence in a certain case. Before that day, however, the case was adjourned, and the witness was not served with a fresh summons or notification of the adjournment. Not having attended when the case was heard, he was fined. *Held* that, not having been re-summoned, the witness was not bound to attend.—In re Sreenath Ghose, 10 W. R. 33, Cr.

A MAGISTRATE cannot issue a warrant of arrest against a witness unless he is first satisfied that the witness has disobeyed a summons which was served on him. In order to make a person summoned as a witness liable under s. 174, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart.—Queen v. Sutherland, 14 W. R. 20, Cr.

THE TASHILDAR in a *dakhil-kharij* case pending before him issued an order to a peon directing him produce the accused in Court to support his objection to a claim for pre-emption. The accused refused to attend. *Held* that the tahsildar was legally competent to issue such an order to the accused; but as it had been directed to the peon, and not to the accused, the latter could not be convicted of disobedience to the order of a public servant, under s. 174.—*The Crown v. Firkha*, Panj. Rec. No. 6 of 1870, Cr.

S. 174 has been held not to apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court.—1 Bom. H. C. 38; 7 Mad. H. C. Rulings 43. On the other hand, s. 174 has been held to apply to the case of a defendant in a criminal case, who had entered into his personal recognizance, and given bail, to appear, his answer that his surety had paid in default of his appearance, and that he himself was liable to have his recognizance escheated, being held not to affect the charge.—*Queen v. Tajumaddi Lahory*, 1 B. L. R., App. 1, Cr.

WHERE the accused failed to attend in obedience to a summons to give evidence before the Settlement Officer as to matters of custom, having explained to the process-server his inability to be present owing to the expected arrival of the *barat* in connection with his granddaughter's marriage, which circumstance the process-server omitted to mention to the officer issuing the summons, *held* that a conviction under s. 174 was not maintainable, as the accused could not be said to have intentionally disobeyed the summons or order within the meaning of the above section.—*The Empress v. Ramdhir*, Panj. Rec., No. 22 of 1880, Cr.

A SUMMONS was affixed to the door of an accused person. The case, however, was not taken up on the day fixed in the summons, but was adjourned by proclamation to the 5th June, on which day the accused did not attend. There being nothing to show that the accused was aware of the summons requiring him to attend on the first occasion, it was held (1) that there was no evidence of the commission of an offence under s. 174, and (2) that it was irregular to adjourn a case by proclamation, it being the duty of the Magistrate to give special notice to the parties of the date to which a case is adjourned.—6 Mad. H. C. Rep., App., 29.

THE ACCUSED were arbitrators in a civil suit, and were summoned to attend Court on the 5th April, but failed to attend. They were again summoned for the 30th April, and again made default. The Court convicted them under s. 174 for non-attendance in obedience to an order from a public servant. *Held* that, if an offence had been committed, the Court, whose order was disobeyed, could not try the offenders; but that no offence had been committed.—*The Crown v. Kuria*, Panj. Rec., No. 18 of 1875, Cr. And in *The Crown v. Kasli Ram*, Panj. Rec., No. 2 of 1871, Cr., *held* that arbitrators were not punishable for refusing to attend Court.

In consequence of the default of appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. The Deputy Magistrate applied for and received the permission of the District Magistrate to try the accused under s. 174. *Held* that the Deputy Magistrate had no jurisdiction to try the case, it not having been referred to him "either on complaint preferred directly to the Magistrate, or on the report of a police-officer." *Held*, also, that notwithstanding s. 219 of Act XXV. of 1861 (corresponding with ss. 192, 200, Act X., 1882), the accused might have been proceeded against under s. 174, Penal Code.—*Queen v. Tajumaddi Lahory*, 1 B. L. R., App. 1, Cr.

THE ACCUSED (Iambardárs) were summoned by the naib-tahsildar to attend and file security for the lease of a rukh. The Iambardárs omitted to attend, upon which they were fined by the naib-tahsildar under s. 174. *Held* that the naib-tahsildar was not competent to commence proceedings against the accused on the criminal side of his Court. *Quere*, whether he was legally competent to issue the order. Again, where the tahsildar summoned certain patwaris to attend, and convicted them under s. 174 for non-attendance, the Chief Court quashed the conviction on the ground that the tahsildar was not competent to institute criminal proceedings.—*Koda v. The Crown*, Panj. Rec., No. 28 of 1869, Cr.

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court) Presy. Mag. or Mag. of 1st or 2nd class. Uncoog. Summons. Bailable. Not comp.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zila Court, intentionally omits to produce the same. A has committed the offence defined in this section.

To sustain a conviction under ss. 174 and 175, it must be shown that the summons, &c., issued from a Court, or by order of a public servant, authorized to issue it, or that a proclamation has been made by a competent authority, directing the accused person to appear, with or without a document, at a certain time and place.—*In re Shib Pershad Chuckerbutty*, Petitioner, 17 W. R. 38, Cr.; 7 Mad. H. C. Rep. 14.

Presy. Mag. or Mag. of 1st or 2nd class. Uncoog. Summons. Bailable. Not comp.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

THE refusal of a person to join in a dacoity does not imply a knowledge on his part of the commission of that offence or render him liable to punishment, under s. 176 for intentional omission to give information for the purpose of preventing the commission of an offence.—7 W. R. 29, Cr.

THE above section applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation.—*In re Phool Chand Brojobassee*, Petitioner, 16 W. R. 35, Cr.

UNDER rule 10 of para. 16 of the rules framed under the Land Revenue Act, 1871, lambaridars are bound to carry out to the best of their ability any orders that they may receive from the Deputy Commissioner requiring them to furnish information. Two cases of cholera occurred in the village of accused, a lambaridar; he was absent from his village when one case occurred, and was on his way to report the other case when he met the native doctor who took him back to the village. He was convicted under s. 176, on the ground that he had not complied with an order issued by the Deputy Commissioner requiring cholera-cases to be reported. *Held* that, though the accused appeared by his own conduct to be aware of the duty imposed upon him in respect of furnishing information regarding cases of cholera, he did, to the best of his ability, conform with the order of the Deputy Commissioner. Conviction quashed.—*Rama v. The Crown*, Panj. Rec., No. 23 of 1872, Cr.

177. Whoever, being legally bound to furnish information on any Presy. Mag.
 furnishing false information, subject to any public servant, as such, furnishes, or Mag. of 1st or 2nd class.
 as true, information on the subject which he Uncog. Summons.
 knows or has reason to believe to be false, shall be punished with simple Bailable.
 imprisonment for a term which may extend to six months, or with fine Not comp.
 which may extend to one thousand rupees, or with both; or, if the
 information which he is legally bound to give respects the commission
 of an offence, or is required for the purpose of preventing the commis-
 sion of an offence, or in order to the apprehension of an offender, with
 imprisonment of either description for a term which may extend to two
 years, or with fine, or with both.

Illustrations.

(a.) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b.) A, a village-watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5, section 7, Regulation III., 1821, of the Bengal Code,* to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

S. 177 does not apply to the case of any person who is examined by a police-officer making a false statement, but to cases of certain persons legally bound to give certain information.—12 W. R. 23, Cr.

It is no offence under s. 117 to make a false representation in a memorandum of appeal, such memorandum not being required by law to be verified.—Ghanaya v. The Empress, Panj. Rec., No. 17 of 1879, Cr.

Under Act V. of 1861 a police-officer is bound to communicate information to his superior officer regarding the commission of a riot and to make an entry thereof in his diary; and the omission to give such information brings him within the purview of s. 177, Penal Code.—21 W. R. 30, Cr.

The above section has been held not to apply to the case of any person who, being examined by a police-officer, makes a false statement, but only to those cases in which landholders, &c., are bound by law to give information, and to other analogous cases of the same description.—12 W. R. 23.

The form of an accusation by a District Superintendent of Police under s. 193, Penal Code, does not preclude a Magistrate from framing the charge under s. 177; the sanction of the District Superintendent, required under s. 168 Act XXV. of 1861, to give the Magistrate jurisdiction, need not be express, but may be implied.—16 W. R. 67, Cr.

ONE Yesu gave the accused four annas to purchase a stamp for him (Yesu). The accused, on being asked his name by the stamp-collector, said, "Yesu," instead of giving his own name. Held that this amounted to the offence of giving false information under s. 177, and not to the offence of cheating by personation.—Reg. v. Raghoji bin Kanoji, 3 Bom. II. C. Rep. C. C. 42.

WHERE certain vaccinators were convicted under s. 177 for making false returns to their official superiors, the conviction was upheld, the Court holding (1) that the section embraced every case in which a subordinate sought to impose false information upon his superior, and (2) that, as the accused were public servants, part of the duties they undertook was to make true returns.—Mad. II. C., Dec. 21, 1871; 6 Mad. H. C. Rep. App. 48.

* Repealed by Act XVII., 1862.

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court) Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Ditto.

Ditto.

178. Whoever refuses to bind himself by an oath or affirmation* to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

WHERE, in the course of a revenue-enquiry, the accused made a deposition, but refused to sign it, it was held that such refusal did not constitute an offence punishable under s. 180.—*Mad. H. C. Rulings*, Jan. 18, 1870.

WHEN any such offence as is described in s. 175, s. 178, s. 179, s. 180, or s. 228, Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.—*Act X. of 1882*, s. 480.

If the Court in any case considers that a person accused of any of the offences referred to in s. 480 (of *Act X. of 1882*), and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under s. 480 (of *Act X. of 1882*), such Court, after recording the facts constituting the offence, and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate. The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.—*Act X. of 1882*, s. 482.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

181. Whoever, being legally bound by an oath or affirmation* to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation,* makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be

* See s. 15, *Act X., 1873*.

punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

WHERE a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181, but commit to the sessions under s. 193.—11 W. R. 24, Cr.

WHERE an officer who administered the oath tried a case wholly beyond his jurisdiction, it was held that a person was not legally bound to state the truth before such officer.—2 Mad. H. C. 438.

WHERE the accused made a false return on oath of the service of a summons, it was held that he had committed an offence under s. 193, and not under s. 181.—Reg. v. Shama Churn Roy, 8. W. R. 27, Cr.

IN the Crown v. Sain Dass (Panj. Rec., No. 25 of 1873, Cr.), it was held that a judicial officer before whom the offence of giving false evidence had been committed might himself try and punish the offender. But in Kishen v. The Crown, (Panj. Rec., No. 7 of 1874, Cr.), the Court held that the offence specified in s. 181 (making a false statement on oath to a public servant) is, when committed in a Court of Justice, a contempt of Court; and under s. 473, Criminal Procedure Code, (corresponding with s. 487, Act X., 1882), cannot be tried by the Court in which it was committed.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

False information, with intent to cause a public servant to use his lawful power to the injury of another person.

Illustrations.

(a.) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b.) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

An offence under s. 211 includes an offence under s. 182. It is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211.—I. L. R., 5 Cal. 184.

A DEPUTY Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211. Whether such sanction has been rightly or wrongly given, is a question for the accused to raise before a competent Court.—I. L. R., 4 Cal. 869.

A FALSELY, and with intent to injure, informed the police that B had stolen property in his house. The police searched B's house, and the information proved to be false. Held that A had instituted criminal proceedings, and that he was therefore guilty of an offence under s. 211, and not under s. 182.—Muthra v. Roora, Panj. Rec., No. 16 of 1870, Cr.

SS. 182 AND 211 distinguished. The latter has been held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning.—*Raffe Mahomed v. Abbas Khan*, 8 W. R. 67, Cr. Therefore s. 182 does not apply to the case of a person laying a false charge before a police-officer.

WHERE the accused enlisted in the police, calling himself a Ját, got an appointment, and drew pay as a Government servant, whereas he was in reality an Ahir, a caste whose enlistment was prohibited, which fact was well known to the accused: *Held* that the Magistrate rightly held that the offence of cheating by personation had not been committed. *Seemle*, that the accused might have been convicted under s. 182.—*The Empress v. Buddha*, Panj. Rec., No. 14 of 1880, Cr.

No COURT shall take cognizance of any offence punishable under ss. 172 to 188, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate.—Act X. of 1882, s. 195. Thus, where A, out of malice to B, gives C, a public servant, false information intended to injure B, B cannot prosecute A criminally without C's consent.—*In re Moulvy Mahomed Abdool Lutef*, 5 R. C. R. 37; 9 W. R. 31, Cr.

UNDER the above section the gist of the offence consists in the offender's *intention* in giving the false information. The offence is the *contempt of the lawful authority* of the public servant by moving him to use his authority wrongfully. It is against the public servant that it is committed, and it is complete directly the false information is given, irrespectively of the results which may actually follow the action that may be taken upon it. The specific injury that may result to the person in respect of whom the information is given is a distinct matter. And so, *in re R. v. Haree Ram*, it was held that no ground for a complaint of giving false information to a public servant under this section exists on the part of any one but the public servant against whom the offence was committed.—3 N. W. P. 194.

WHERE the accused presented a petition of plaint in which they requested the officer receiving the plaint to hear the case in his own Court, alleging that the defendants would be favoured in the tahsil if the case was sent to the tahsildar for disposal, which allegation was afterwards acknowledged to be without foundation, it was held that the facts established did not bring the case within the provisions of s. 182, as there was nothing to show that the accused had any intention to cause the officer to whom their plaint was presented to use his lawful power to the injury or annoyance of any person, nor could it be said that the same officer would have done anything which he ought not to do if he had retained the case, or would have omitted to do his duty if he had not sent it to the tahsildar.—*The Empress v. Gokal*, Panj. Rec., No. 34 of 1879, Cr.

S. 182 DOES not apply where the public servant misinformed is only competent to pass (and passes on) the information, and the power to be exercised by him cannot tend to any direct or immediate prejudice of the person against whom the information is levelled.—*The Queen against Periannan*, and *The Queen against Naraina*, 1. L. R., 4 Mad. 241. The following is a full report of these two cases:—“The facts in these cases, which were referred by the District Magistrate of Salem for the orders of the High Court on the ground that the proceedings therein were illegal, are sufficiently set out, for the purpose of this report, in the judgment of the Court (Innes and Muttusami Ayyar, JJ.). Judgment: The material facts in this case are as follow: Complaint was made to the Village Magistrate that certain persons were beaten, and that jewels, exceeding Rs. 10 in value, were taken from the persons beaten. The Village Magistrate reported the matter at the police-station, and the station-officer, after inquiry, referred the cases as false to the Sub-Magistrate of Vaniyambádi. In doing so he asked for sanction to prosecute the complainants under s. 182 (giving false information to a public servant with intent to cause him to use his lawful power to the injury of another person). The Sub-Magistrate accorded sanction, and subsequently himself tried, convicted, and punished the accused for an offence under s. 182. The District Magistrate submits that the proceedings are illegal, on the grounds (1) that the Village Magistrate to whom the information was given had no powers in the case; (2) that the Sub-Magistrate had no power to give sanction, as he was not the public servant to whom the

information was given. We are unable to concur in the opinion of the District Magistrate. Two questions appear to us to arise on the case : 1st, is s. 182 applicable to the circumstances ? and, 2nd, was anything further required than what was done to reder the prosecution legal ? We think the words 'to use his lawful power' in s. 182 refer to some power to be exercised by the officer misinformed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. They do not, we think, apply to such prejudice as might eventually arise in consequence of certain harmless intermediate steps to be taken by the misinformed officer, such as were taken in the present case, where all that the misinformed officer did or could do was to pass on the information. As to the other question, we think all was done that was necessary. The public servant himself complained, which is sufficient to satisfy the requirements of the section (467, Criminal Procedure Code, corresponding with s. 195, Act X., 1882) ; and if it were not so, the Village Magistrate may be said to be subordinate to the second-class Magistrate, and the sanction of the second-class Magistrate would be sufficient. We shall not therefore interfere."

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncoog.
Summons.
Bailable.
Not comp.

THE pay of G, a servant of a Railway Company, fell due on the 1st April. On the 31st March, the Civil Court granted a prohibitory order under Act VIII. of 1859 attaching G's pay, and the order was served on the Auditor of the Company on the 1st April. The Auditor returned the order, having endorsed on it that it was dated March 31st, and G's pay was not due till the 1st April. The order was again served on the 1st April, and the Auditor again returned it with the remark that since the first service the pay due to G had been made over to him. The Auditor was convicted under s. 183 for resisting the taking of property by the lawful authority of a public servant. *Held* that the conviction was bad under s. 183, and could not be sustained under s. 188, as on the 31st March there was no debt due to G on which the prohibitory order could operate, and the Auditor was therefore not bound to obey such an order.—*Lightfoot v. The Crown*, Panj. Rec., No. 9 of 1874, Cr.

THE accused was convicted, under s. 183, Penal Code, with obstructing a bailiff, who broke open the doors of the accused (a third party) to execute a decree against a judgment-debtor. The Bombay High Court, in quashing the conviction, made the following observations : "Now, in the present case, there is no evidence whatever that there were any goods of the debtor in the house of the accused Gazi ; and, in the absence of such evidence, the presumption must be in her favour that there were no such goods. As there was no such property in the house, Gazi did not offer any resistance to the taking of any property by the lawful authority of a public servant, which is the offence of which she has been convicted under s. 183. Nor could she be convicted under what would appear to be a more appropriate section, namely s. 186, for voluntarily obstructing a public servant in the discharge of his public function ; for the bailiff would have been exceeding his functions if he had done that which Gazi prevented him from doing."—7 Bom. C. C. 83. "But it may be doubted whether the last proposition is quite sound. The resistance could only be justified as an act done in private defence of property ; and, if so, it would seem to come under the exception contained in s. 99, cl. 1, which forbids such defence against an act done by a public servant acting in good faith under colour of his office, though his act may not be strictly justifiable by law."—*Mayne's Penal Code*, tenth edition, p. 150.

184. Whoever intentionally obstructs any sale of property offered Ditto.

Obstructing sale of property offered for sale by authority of public servant. for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which

may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend two hundred rupees, or with both.

A PERSON is guilty of contempt of the lawful authority of a public servant under s. 185 by bidding at an auction-sale held by a Magistrate and failing to complete the sale.—3 W. R. 33, Cr.

WHERE the lease of a ferry was put up to auction, and the accused gave a mock-bid, it was held that he was rightly convicted under s. 185.—5 Rev., Jud., and Pol. Journal, Cal., p. 38.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

THE offence of escaping from lawful custody should not be punished under this section, but under s. 224.—2 Bom. H. C. 134.

WHERE a Magistrate convicted a carter under this section for refusing to give his cart on hire to an officer of Government, the conviction was quashed.—9 Bom. H. C. 165.

A COURT has no power to fine summarily, without trial according to law, persons resisting or refusing to aid in the apprehension of a criminal.—Sookha v. The Crown, Panj. Rec., No. 18 of 1869, Cr.

THE resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of criminal jurisdiction; and such an offence is punishable under s. 186.—Queen v. Bhagai Defadar, 2 B. L. R., F. B. R., 21.

A MORUSSIL Small Cause Court has no jurisdiction to punish for resistance of a process which it has issued, but such resistance being an offence under s. 186, it may send the accused before a Magistrate to be dealt with according to law.—11 W. R. 62.

WHERE accused refused to allow the attachment of his property in execution of a decree passed against him by the Cantonment Small Cause Court, held that the Judge of the Court had not jurisdiction as a Magistrate to try and convict accused of an offence under s. 186.—The Empress v. Khushala, Panj. Rec., No. 22 of 1879, Cr.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an

offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

A MAGISTRATE directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the police." *Held* that such order was not authorized by ss. 90 and 91 of Act X. of 1872 (corresponding with ss. 43 and 42 of Act X. of 1882), and the conviction of such landholder, under ss. 187 and 188, Penal Code, for disobedience to such order, was not maintainable.—*Empress of India v. Bakhshi Ram and others*, I. L. R., 3 All. 201.

188. Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Disobedience to order duly promulgated by public servant. *Presy. Mag. or Mag. of 1st or 2nd class, Uncog. Summons. Bailable. Not comp.*

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

WHERE an officer promulgates an order under this section without having any authority to do so, the person against whom it is promulgated would not be bound to obey it.—5 Bom. H. C. 21, Cr.

THE action of a Magistrate in ordering that the banks of a tank in the dry bed of a river be destroyed, on the ground that stopping the river interfered with the public health, was held to be illegal.—10 W. R. 36, Cr.

To sustain a conviction under the above section, it must be clearly proved that the accused knew that an order had been promulgated by a public servant directing the accused to abstain from a certain act.—12 W. R. 49, Cr.

It is illegal on the part of a Magistrate to forbid, in general terms, two parties using musical instruments in the neighbourhood of each other's houses: he may forbid them doing so for the purpose of mutual annoyance.—6 W. R. 40, Cr.

WHERE a Magistrate, by an order addressed to two persons, directed them to remove a certain embankment whereby the adjacent lands of the complainant were in danger of being flooded, the High Court set aside the order as *ultra vires*.—5 Mad. H. C. Rul. 19.

THE above section limits the Magistrate to certain specified grounds of interference—namely, obstruction, annoyance, or injury to the public; but where these do not exist, or may not fairly be apprehended, he has no authority to interfere.—4 Mad. H. C. App. 6.

AN order by a Magistrate, prohibiting the straying of cattle within certain limits, was held not to be authorized by this section. There could therefore be no conviction for disobedience of such order under s. 289.—*Queen v. Mozafar Khalifa*, 9 B. L. R., App., 36.

IF, when directed by the order of a public servant duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under s. 188.—*I. L. R.*, 1 All. 527.

WHERE the facts are such as to cover the second penal clause of the above section, it is the duty of the Magistrate to state such facts in his finding, so that it may be apparent that the case contains elements of aggravation to warrant the higher punishment.—3 Bom. 32, Cr.

IT is not a lawful order to direct a man not to leave his home without informing the *lambardār* of the village or the police. *The Crown v. Boolakee*, Panj. Rec., No. 12 of 1868, Cr.; or without a ticket-of-leave or the permission of the police.—*The Crown v. Hurnam Singh*, Panj. Rec., No. 45 of 1867, Cr.

S. 188 applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. The proper remedy for disobedience of an order of injunction passed by a Civil Court is committal for contempt.—In the matter of the petition of *Chandrakanta De*, *I. L. R.*, 6 Cal. 445.

IT is competent to a Magistrate to issue an order to certain persons in possession and management of a Hindu temple to widen the door-way in over to give the necessary ventilation, and to afford proper means of ingress and egress to the pilgrims. Even if the temple were private property, the order could be passed, as the building was open to the Hindu public.—*Ranchunder Eknath*, 6 Bom. 36, Crown Cases.

ACCUSED was convicted, under s. 188, of exposing beef for sale in the city of Amritsar, and thereby disobeying an order duly promulgated. He was sentenced to rigorous imprisonment for two months, and his knife and scales were ordered to be confiscated. The Chief Court, on the revision side, cancelled the order of confiscation, as being unauthorized by law.—*The Crown v. Imami*, Panj. Rec., No. 13 of 1872, Cr.

A MINOR, whose property was under the Court of Wards, having been fined by the Magistrate for disobedience by his servants of a lawful order duly promulgated with reference to such property, the order of the Magistrate was reversed, on the ground that the offence was not committed by the minor in person, and that the prosecution was misdirected.—*The Crown v. Sirdar Dyal Singh*, Panj. Rec., No. 84 of 1866, Cr.

A MAGISTRATE directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the police." Held that such order was not authorized by ss. 90 and 91 of Act X. of 1872 (corresponding with ss. 43, 42, Act X. of 1882), and the conviction of such landholder, under ss. 187 and 188, Penal Code, for disobedience to such order, was not maintainable.—*Empress of India v. Bakhshi Ram and others*, *I. L. R.*, 3 All. 201.

A MAGISTRATE has power, under s. 62 of Act XXV. of 1861 (corresponding with s. 144, Act X. of 1882), to prohibit a particular individual from holding a *hāt* on a particular spot on a particular day, at least for a temporary period, if he is satisfied, upon reasonable grounds, that the order is likely to prevent, or tends to prevent, a riot or an affray.—In the matter of the petition of *Bykuntram Shaha Roy and others*, 10 B. L. R. 434.

IN a civil suit to which accused was a party, the decree was that the marriage of a certain girl should be arranged for by A, another party to the suit, and that accused, her maternal uncle, should, in the meantime, have her custody only. Notwithstanding this decree, accused gave her away in marriage to B. A prosecuted

accused, and the latter was convicted of disobeying a lawful order of a public servant. *Held* that the conviction could not stand.—*The Crown v. Nand Lall*, Panj. Rec., No. 3 of 1876, Cr.

THE elements necessary to constitute an offence under s. 188 are (1) disobedience to the order; (2) such disobedience must cause, or tend to cause, one or more of the injurious results mentioned in the section. Thus, where an order was issued that all persons who carried arms should take out licenses under Act XXXI. of 1860, it was held that disobedience to such an order was not an offence under this section, as there was nothing to show that it would cause, or tend to cause, obstruction, annoyance, &c.—3 B. L. R., App., 149.

A MAGISTRATE can prevent a person from doing a wrongful act, but not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his rights of property, because another person would be likely to commit a breach of the peace if he did so. Therefore, where a Magistrate issued an order preventing a householder from building a wall to his own house, the order was set aside as illegal.—In the matter of the petition of Kashichunder Doss, 10 B. L. R. 441.

OOMRA was convicted of stealing a heifer. Moola bought the stolen heifer from accused No. 1, and was ordered by the Deputy Commissioner to give notice of the purchase at the thannah. This Moola omitted to do, and he was tried and convicted under s. 188, Penal Code. *Held* that Moola had not committed an offence under that section, as the order in question was not one which the Deputy Commissioner was lawfully empowered to promulgate within the meaning of that section.—*Oomra v. The Crown*, Panj. Rec., No. 17 of 1869, Cr.

THE accused were convicted by the Deputy Commissioner of Rohtak, under s. 188, of disobeying an order issued by the Lieutenant-Governor, and dated 7th April 1865. Para. 3 of the order was as follows:—"His Honor desires that in the case of every *kacha* road in this province, which has to support a traffic carried on carts, one side may be assigned to the carts, and one reserved for light traffic." The accused drove heavy carts on that part of a road which was set apart for light traffic. *Held* that the order of the 7th April 1865 was not legal, and the conviction could not stand.—*The Crown v. Udnir*, Panj. Rec., No. 8 of 1873, Cr.

THE accused were caught fishing in the canal near Dinanager in the Gurdáspur District with nets, the meshes of which were smaller than one inch and a quarter square, or six inches all round, the minimum size fixed by Financial Commissioner's Circular No. 40 of 1870. The accused did not hold licenses for fishing. The Magistrate convicted the accused under s. 188. *Held* (by Lindsay, J.) that the Financial Commissioner's Circular was not authorized by law, and the conviction must be quashed. *Held* (by Campbell, J.) that the facts did not disclose an offence under s. 188.—*The Crown v. Kanhaya*, Panj. Rec., No. 11 of 1873, Cr.

THE pay of G, a servant of a Railway Company, fell due on the 1st April. On the 31st March, the Civil Court granted a prohibitory order under Act VIII. of 1859 attaching G's pay, and the order was served on the Auditor of the Company on the 1st April. The Auditor returned the order, having endorsed on it that it was dated March 31st, and G's pay was not due till the 1st April. The order was again served on the 1st April, and the Auditor again returned it with the remark that since the first service the pay due to G had been made over to him. The Auditor was convicted under s. 183 for resisting the taking of property by the lawful authority of a public servant. *Held* that the conviction was bad under s. 183, and could not be sustained under s. 188, as on the 31st March there was no debt due to G on which the prohibitory order could operate, and the Auditor was therefore not bound to obey such an order.—*Lightfoot v. The Crown*, Panj. Rec., No. 9 of 1874, Cr.

IN cases where, in the opinion of the District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order, stating the material facts of the case, and served in manner provided by s. 134 (of Act X. of 1882), direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, if such Magistrate considers

that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray. An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving, in due time, of a notice upon the person against whom the order is directed, be passed *ex-parte*. An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place. Any Magistrate may rescind or alter any order made under this section by himself, or any Magistrate subordinate to him, or by his predecessor in office. No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the local Government, by notification in the official Gazette, otherwise directs.—Act X. of 1882, s. 144.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

191. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(a.) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b.) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c.) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d.) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(e.) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation. A has given false evidence.

THE words of s. 191 are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false statement is intentionally given.—16 W. R. 37, Cr.

IT is not necessary under s. 194 that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police-officer, would amount to the offence of giving false evidence as defined by s. 191 taken together with s. 118.—20 W. R. 41, Cr.

A MADE an application for a new trial under s. 21 of Act XI. of 1865. He filed a memorandum of grounds verified as a plaint, and therein knowingly made a false statement. *Held* (Glover, J., dissenting) that he had not thereby committed an offence under s. 191 or s. 192, Penal Code, as the false statement was not made in the course of a judicial proceeding.—*In re Haran Mandal*, 2 B. L. R. 1, Cr.; 10 W. R. 1, Cr.

A PERSON who makes a false statement upon oath before a police patel acting under Act VIII. of 1867 (Bombay), s. 13, gives false evidence within the meaning of s. 191, and is punishable under s. 193, but his trial for that offence requires no sanction, a police patel not being a Criminal Court within the definition of Act X. of 1872, s. 4 (see s. 468), although offences under chap. x. of the same Act committed before the same officer cannot be tried without a sanction. See s. 467.—I. L. R., 4 Bom. 479.

WHERE a witness was, at the beginning of the day, solemnly affirmed, once for all, to speak the truth in all the cases coming before the Court that day, it was held that he might be convicted, under s. 193, of giving false evidence in a suit which came on on that day, although he was not affirmed to speak the truth in that suit after it was called on on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered.—*Reg. v. Venkatachalam Pillai*, 2 Mad. H. C. Rep. 43.

THE materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding, and an indictment under ss. 191 and 193, though it does not allege materiality, is good, if it alleges sufficiently the substance of the offence.—*Reg. v. Airdus Sahib*, 1 Mad. H. C. Rep. 38. But the averment that the false evidence was *intentionally* given—i.e., that it was given with the direct and express *intention* of deceiving—is very material (*Reg. v. Maharaj Misser*, 7 B. L. R., App., 66), and should be proved at the trial. (*Reg. v. Denonath Bujjur*, 9 W. R. 5, Cr.; *Reg. v. Sidhoo*, 13 W. R. 56, Cr.).

NEITHER the words "shall answer all questions" in s. 118 of the Code of Criminal Procedure (corresponding with ss. 160, 161, Act X., 1882), nor the words "shall be bound to answer all questions" in s. 119 of the same Code (corresponding with ss. 161, 162, Act X., 1882) constitute "an express provision of the law to state the truth" within the meaning of s. 191, Penal Code. Sections 118 and 119 are merely

intended to oblige persons to give such information as they can to the police, in answer to the questions which may be put them, and they impose no legal obligation on those persons to speak the truth.—*The Empress v. Kassim Khan. The Empress v. Mussumut Dahia, I. L. R., 7 Cal. 121.*

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any Fabricating false evidence. document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(a.) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b.) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c.) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

WHERE an accused person is charged with fabricating false evidence, it should be proved that such evidence might cause some one "to form an erroneous opinion touching any point material to the result;" and it has been held that in false declarations and certificates the falsity must be in some material point.—*Reg. v. Damodhar Ramchandra Kulkarni, 5 Bom. II. C. Rep. C. C. 68.*

A MADE an application for a new trial under s. 21 of Act XI. of 1865. He filed a memorandum of grounds verified as a plaint, and therein knowingly made a false statement. *Held* (Glover, J., dissenting) that he had not thereby committed an offence under s. 191 or s. 192, Penal Code, as the false statement was not made in the course of a judicial proceeding.—*In re Haran Mandal, 2 B. L. R. 1, Cr. ; 10 W. R. 1, Cr.*

WHERE the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently" within cl. 2, s. 464, Penal Code, but fabricating false evidence within s. 192.—*In re Mir Ekrar Ali. The Empress v. Mir Ekrar Ali, I. L. R., 6 Cal. 482.*

WHERE the Magistrate of the district discharged an accused person upon the ground that the fabrication of false evidence by him to be used in his defence on a criminal charge was not an offence falling within ss. 192, 193, the Chief Court, on the revision side, set aside the Magistrate's order, and directed him to continue the proceedings, which his order discharging the accused had terminated.—*The Empress v. Jiwan Singh, Panj. Rec., No. 10 of 1880, Cr.*

THE filing of a vakálatnáma with a false attestation is not the fabrication of false evidence. It is necessary to show that it was intended that the false circumstance should appear in evidence in a judicial proceeding, i.e., should appear as part of the evidence on which the judicial officer has to form his judgment, and that the circumstance was of such a nature as might have caused the judicial officer to entertain an erroneous opinion touching some material point in the case.—5 Mad. H. C. Rep. 373.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

Explanation 1.—A trial before a Court Martial or before a Military Court of Request is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

FALSE charge under s. 211, and false evidence under s. 193, are not cognate offences, nor parts of the same offence, but may be punished separately.—7 W. R. 59, Cr.

IN cases of giving false evidence, a separate charge against each prisoner must be framed, and a separate trial held of each charge.—Anonymous, 3 Mad. Rep., App., 32.

A HINDU convert to Christianity is not under a legal obligation to speak the truth unless the usual form of oath has been administered.—Reg. v. Vedamootoo, 4 Mad. H. C. Rep. 185.

WHERE the accused falsely deposed in the name of another person, it was held that he had given false evidence—not cheated by personation.—Reg. v. Hossain Ali, 8 B. L. R. App. 25.

WHERE a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181, Penal Code, but commit to the Sessions under s. 193.—11 W. R. 24, Cr.

A CHARGE of giving false evidence under s. 193, Penal Code, should state the particular stage of the proceeding in the course of which the prisoner made the alleged false statement.—10 W. R. 37, Cr.

WHERE the accused made a false return on oath of the service of a summons, it was held that he had committed an offence under s. 193, and not under s. 181.—Reg. v. Shama Churn Roy, 8 W. R. 27, Cr.

WHEN a party makes a false statement while legally bound by solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence.—3 *Mad. H. C. Rep. App. 29.*

IT is illegal to commit and try together several prisoners charged with having given false evidence in one and the same proceeding. But in case of a commitment a Sessions Court may try the prisoners separately.—*Reg. v. Kurree, 11 W. R. 42, Cr.*

IT is not necessary to prove corrupt intention in a case of giving false evidence. It is sufficient that there is proof of intention; and if the statement is false, it may be presumed that the accused, in making it, intentionally gave false evidence.—3 *N. W. P. 133.*

A CHARGE of giving false evidence under s. 193, Penal Code, should be precise; and where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge.—9 *W. R. 14, Cr.*

WHERE a witness intentionally gives false evidence, and it is doubtful whether the false statement was made before the Magistrate or the Sessions Judge, the witness may be convicted of giving false evidence upon an alternative finding.—6 *W. R. 65 (F. B., Cr.).*

WHERE a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false.—*Reg. v. Ganoji Ranaji, 5 Bom. H. C. Rep., Cr. Ca., 49.*

THE making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions.—6 *Mad. H. C. Rep. App. 27.*

AN offence under s. 193, being an offence in contempt of Court within the meaning of Act X. of 1872, s. 473 (corresponding with Act X. of 1882, s. 487), cannot, under that section, be tried by the Magistrate before whom such offence is committed.—1 *L. R., 1 All. 625 (F.B.).*

PROOF of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under s. 72, Penal Code.—*Queen v. Palamy Chetty, 4 Mad. Rep. 51.*

IN a charge of giving false evidence the following facts should be set out: (1) the statement intended to be proved as false; (2) that such statement was made; (3) that it is untrue in fact; and (4) that the accused knew it to be so when he made it.—*Reg. v. Kalichurn Lahoree, 9 W. R. 54, Cr.*

A CHARGE under s. 193 should specify the judicial proceeding in a stage of which the alleged false evidence was given, and should contain the exact words as definitely and specifically as possible which constitute the false evidence.—*Mewa Sing v. The Crown, Panj. Rec., No. 36 of 1869, Cr.*

THE commitment of certain persons charged, under s. 193, with intentionally giving false evidence, was held illegal, because the sanction of neither the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate, was given.—18 *W. R. 32, Cr.*

WHERE a Civil Court failed to make a note or memorandum of the evidence of the accused before it, it was held that such failure did not operate to vitiate the depositions, if the evidence itself was duly recorded in the language in which it was given in such Court.—*Reg. v. Beharee Lall Bose, 9 W. R. 69, Cr.*

HELD by a Full Bench (Campbell, J., dissenting) that to establish a charge of perjury the evidence of one witness not corroborated as to the falseness of the statement on which the perjury is assigned is insufficient.—*Queen v. Lallchand Kowra, Chowkeedar, and others, 1 Ind. Jur., N. S., 83; S. C., 5 W. R. 23, Cr.*

WHERE two statements are not absolutely contradictory of each other, an alternative finding cannot be based upon them, it being held that every presumption

in favour of the possible reconciliation of the two statements must be made. Nor can an alternative finding be based on two statements, one of which is hearsay.—12 W. R. 11.

A CONVICTION may be had for giving false evidence under s. 193, even if the evidence be given in matters not judicial (such as before the Collector acting in his fiscal capacity under Reg. XIX. of 1814), but it must be proved that the false statement was made under the sanction of the law.—Reg. v. Audheen Roy and others, 14 W. R. 24, Cr.

UNDER s. 193 it is an offence to suppress evidence. Thus, where the accused asked a witness to suppress certain facts in giving his evidence before a Magistrate on a charge of defamation, it was held that this constituted abetment of the offence of giving false evidence in a stage of a judicial proceeding.—Reg. v. Audy Chetty, 2 Mad. H. C. Rep. 438.

UPON a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that, making it, the accused intentionally gave false evidence.—Queen v. Amir Ali Khan, 3 N. W. P. 133.

WHERE C falsely represented himself as U, the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, produced C as U, and as the writer of the document, it was held that T ought to be convicted on a charge of abetting the giving of false evidence.—Reg. v. Chundi Churn Nauth, 8 W. R. 5, Cr.

THE prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under s. 19 of the Income Tax Act (Act IX. of 1869) to a tahsildar. Held that the tahsildar was not an officer competent to receive such a petition, and that no offence was committed.—Mooneappa Oodian, Prisoner, Subraya Oodian, Prisoner, 5 Mad. Rep. 326.

WHEN a Civil Court sends an offence under s. 193, Penal Code, to a Magistrate for investigation and commitment, if necessary, the Magistrate cannot return the case to the Civil Court, nor can the Civil Court, after it has sent a case to the Magistrate, commit it to the Sessions; but the Magistrate should proceed with the case himself.—12 W. R. 41, Cr.

AN enquiry by an Assistant Magistrate with a view to tracing the writer of an anonymous letter addressed to him, charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not the stage of a judicial proceeding in which the giving of false evidence is punishable under s. 193, Penal Code.—5 W. R. 72, Cr.

WHERE a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge.—Queen v. Hossain Ali, 8 B. L. R. 25, App.

WHERE a prisoner was convicted of having given false evidence in a judicial proceeding, which proceeding was subsequently set aside in consequence of the sanction for the prosecution not being sufficient, the conviction was quashed, as the alleged false evidence was held not to have been given in a judicial proceeding.—Reg. v. Ravji valad Taju, 8 Bom. H. C. Rep. C. C. 37.

IN the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. Held that such witness was guilty under s. 193, and not under s. 194, as he did not know that he would cause a conviction for murder.—Reg. v. Hardy, 3 B. L. R., App. Cr., 35.

WHERE a Subordinate Magistrate conducted an enquiry in a case of murder and riot, without having received the necessary authority under s. 273, Act XXV. of 1861, it was held that an untrue statement made by a witness in the course of such enquiry was not "false evidence" within s. 193, as the Subordinate Magistrate was acting without jurisdiction.—Khushi Khan v. The Crown, Panj. Rec., No. 24 of 1870, Cr.

IN the High Courts it is the practice to set out in the charge the substance and, as nearly as possible, the words of the statement alleged to be false. Where a charge did not distinctly set out the statement alleged to be false, but it appeared that the accused perfectly understood what was the alleged statement, and was not prejudiced in his defence, the Court refused to interfere.—*Reg. v. Boodhun Ahir*, 17 W. R. 32.

WHERE the Magistrate of the district discharged an accused person upon the ground that the fabrication of false evidence by him to be used in his defence on a criminal charge was not an offence falling within s. 192 or s. 193, the Chief Court, on the revision side, set aside the Magistrate's order, and directed him to continue the proceedings, which his order discharging the accused had terminated.—*The Empress v. Jiwan Singh*, Panj. Rec., No. 10 of 1880, Cr.

THE term "fabrication," in s. 193, refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence.—*Queen v. Raj Coomar Banerjee*, 1 Ind. Jur., O. S., 104.

A CHARGE framed on the model given in sch. iii., Act X. of 1872, charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193, Penal Code, is a good charge; and the Court or jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or jury should find that the allegations made in the charge are proved.—21 W. R. 72 (F. B., Cr.). See also 22 W. R. 2, Cr.

WHERE the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender: *Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193, Penal Code, and of voluntarily assisting in concealing stolen property under s. 414.—*I. L. R.*, 1 All. 379.

IN a case under s. 193, as it is essential that the charge should show not only the judicial proceeding in which the prisoner is accused of having given false evidence, but the particular stage of the proceeding at which the evidence was given (1 B. L. R., App. Cr., 15); the proper way to prove that the judicial proceeding took place is to produce the record thereof.—*Reg. v. Futteali Biswas*, 10 W. R. 37, Cr., which case was followed in *Reg. v. Maharaj Misser*, 7 B. L. R., App., 66, and 16 W. R. 47, Cr.

WHERE a witness was, at the beginning of the day, solemnly affirmed, once for all, to speak the truth in all the cases coming before the Court that day, it was held that he might be convicted, under s. 193, of giving false evidence in a suit which came on on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered.—*Reg. v. Venkatachalam Pillai*, 2 Mad. H. C. Rep. 43.

HELD, by the Division Bench, that where the Assistant Commissioner had no jurisdiction to entertain a suit against one R K, he had therefore no authority under Act X. of 1873 to administer an oath or affirmation to him in the course of the trial: that therefore R K was never legally bound to state the truth, and was therefore not liable to be convicted of giving false evidence in respect of any statement made by him in the trial of the said case upon the merits.—*Narinjan Das v. Ram Kishen*, Panj. Rec., No. 32 of 1879, Cr.

No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.—Oaths Act (X. of 1873), s. 13. And a Full Bench of the Calcutta High

Court has ruled (Jackson, J., dissenting) that the word "omission" includes any omission, and is not confined simply to accidental or negligent omissions.—*Reg. v. Sewa Bhogta*, 23 W. R. 12, Cr.

It is essential, in order to sustain a charge under s. 193, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. A charge under this section should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made. The knowledge by the Sessions Judge of the handwriting of the judicial officer before whom the statement was made is no evidence of the statement having been made before that officer.—*Queen v. Fatik Biswas*, 1 B. L. R., App. 13, Cr.

A Munsif sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving false evidence under s. 193. The Magistrate, without completing the investigation, sent the case back to the Munsif, who finally committed the prisoner. *Held* that, while the Munsif could have committed the prisoner himself under the Criminal Procedure Code without sending him before the Magistrate to conduct the preliminary investigation on a charge of giving false evidence, the Magistrate had acted irregularly in not himself completing the enquiry. Case remanded to the Magistrate accordingly.—*Queen v. Jan Mahomed*, 3 B. L. R., App. Cr., 47.

L WAS charged by S with offences under ss. 193 and 218, and also accused of acts amounting to offences punishable under s. 466 with seven years' imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial charged under s. 218, and acquitted by the Court of Session. The Court of Session then, under Act X. of 1872, s. 472 (corresponding with Act X. of 1882, s. 477), charged L with offences punishable under ss. 193, 195, 211, and 109, Penal Code, and committed him for trial: *Held* that such commitment was not bad because it included the charge under s. 193, such an offence not being exclusively triable by a Court of Session.—*I. L. R.*, 2 All. 398.

As to what should be proved regarding the falsity of the alleged evidence, and the prisoner's knowledge and belief touching it, Norman, J., in delivering the judgment of the Court, observed: "It appears to us that the true rule is that no man can be convicted of giving false evidence except upon proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statement of the party accused made upon oath can be true. If the inference from the facts proved falls short of this, it seems to us that there is nothing on which a conviction can stand; because, assuming all that is proved to be true, it is still possible that no crime was committed."—*Queen v. Ahmed Ally*, 11 W. R. 27, Cr.

A PERSON who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. A charge "that he, on or about the 15th April 1871, gave false evidence," is not sufficiently specific. Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. Three separate offences should not be lumped together in a single charge, but each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distinct sentence.—*Queen v. Sheo Churn*, 3 N. W. P. 314.

WHERE several persons were accused of having given false evidence in the same proceeding, they should be tried separately. A, S, B, D, and P, were jointly tried, A, in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S, B, D, and P on charges of giving false evidence in the same judicial proceeding as to such payments. The Court (Straight, J.), being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions, and ordered a fresh trial of each of the accused separately.—*Empress v. Anaut Ram and others*, 1. L. R., 4 All. 293.

THE following important observations were made by Norman, J., in a case of giving false evidence: "It is one thing to show that a particular statement made by a witness is inaccurate, or even false, and another to say that the witness has intentionally given false evidence To overlook the difference between the making of contradictory statements by a witness under examination, and the giving of intentional false evidence, is to shut one's eyes to the infirmities of human memory, to fail to understand how slow are the intellects and how imperfect the powers of expression of uneducated peasants I firmly believe that if a witness could be convicted upon alternative charges of giving false evidence on contradictions of such a character as those supposed to exist in the present case, no native witness of the lower classes subjected to cross-examination by an adroit and perhaps not over-scrupulous advocate would be safe."—Reg. v. Nomal, 12 W. R. 69.

It is wholly incorrect to charge a number of persons jointly with intentionally giving false evidence under s. 193. A charge under this section should show what the statement is which the accused persons, or any of them, are alleged to have made; and it should disclose the exact date on which the offence charged was committed, and the Court or officer before whom the false evidence was given. Thus, where six persons were charged jointly as follows:—"That you, on or about the 20th day of June, at Tappur, committed the offence of voluntarily giving false evidence in a stage of judicial proceeding," &c.,—it was held that the charge was bad and defective on the following grounds: (1) it charged a number of persons jointly; (2) it did not show what statements the accused made; (3) it did not mention the day and year of the commission of the alleged offence; (4) it did not state the court or officer before whom the false evidence was given.—Reg. v. Maharaj Misser, 7 B. L. R., App., 66; 16 W. R. 47.

To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground,—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.—Queen v. Ross, 6 Mad. H. C. Rep. 342.

It. of Ses. Inoog. Varrant. Not bailable. Not comp.	<p>194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code or the law of England,* shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.</p> <p>If innocent person be thereby convicted and executed.</p>	<p>to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code or the law of England,* shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.</p>
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It is not necessary under s. 194 that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police-officer, would amount to the offence of giving false evidence as defined by s. 191 taken together with s. 118.—20 W. R. 41, Cr.

* See s. 7, Act XXVII., 1870.

195. Whoever gives or fabricates false evidence, intending thereby Ct. of Ses.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by this Code or the law of England* is not capital, but punishable with transportation for life, or imprisonment for a

term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

WHERE a man burns his own house and charges another with doing so, he should be convicted under s. 211, not under s. 195.—8 W. R. 65, Cr.

196. Whoever corruptly uses or attempts to use, as true or genuine Ct. of Ses.,

Using evidence known to be false.

evidence, any evidence which he knows to be false or fabricated, shall be punished in the same

manner as if he gave or fabricated false evidence.

WHERE a person used in Court false documents as true, and swore to their authenticity, he might be convicted under s. 196 only, and not under 471 also.—3 W. R. 17.

THE offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471. Such accused should, therefore, be charged under that section, and not under s. 196.—1. L. R., 5 Cal. 717.

THE provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196, it must be shown that the accused made some use of the false evidence after it was in existence.—Queen v. Sheikh Saffuruddee, 1 Ind. Jur., O. S. 122.

WHERE several persons were accused of having given false evidence in the same proceeding, they should be tried separately. A, S, B, D, and P, were jointly tried. A, in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S, B, D, and P on charges of giving false evidence in the same judicial proceeding as to such payments. The Court (Straight, J.), being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions, and ordered a fresh trial of each of the accused separately.—Empress v. Anant Ram and others, 1. L. R., 4 All. 293.

197. Whoever issues or signs any certificate required by law to be Ct. of Ses.,

Issuing or signing false certificate.

given or signed, or relating to any fact of which such certificate is by law admissible in evidence,

knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

ACCUSED, a copyist in the Small Cause Court office, framed an incorrect copy of a document filed with a certain record, by adding a name not contained in the original. The incorrect copy was delivered duly certified to one L D, the applicant for it, and who was probably in collusion with the copyist. This copy was afterwards

Presy. Mag., or Mag. of 1st class.
Uncog. Warrant. Bailable.
Not comp.

* See s. 7, Act XXVII., 1870.

made use of in a suit against the person whose name had been fraudulently added, and then the fraud was detected. The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Rs. 100. *Held* that s. 167 was not applicable to the case, as it was not shown that accused intended or knew it to be likely that he would cause injury to any person, but that the accused had committed the offence of "issuing or signing a false certificate" within the meaning of s. 197. *Held* also (*per* Barkley, J.) that making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s. 167.—*The Crown v. Deiva Singh*, Panj. Rec., No. 15 of 1879, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

198. Whoever corruptly uses or attempts to use any such certificate Using as true a certificate as a true certificate, knowing the same to be known to be false. false in any material point, shall be punished in the same manner as if he gave false evidence.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

199. Whoever, in any declaration made or subscribed by him, False statement made in declaration which is by law receivable as evidence. which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing it to be false. declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

* Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished* with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

† Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

If a capital offence ; believes to have been committed is punishable with death, be punished* with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and, if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished† with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and, if the offence is punishable with imprisonment for

‡ Presy. Mag.
or Mag. of 1st
class, or
Court by
which offence
is triable.
Uncog.
Warrant.
Bailable.
Not comp.

If punishable with less than ten years' imprisonment. any term not extending to ten years, shall be punished‡ with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

ACCORDING to s. 114, if the nature of the act constitutes abetment, the abettor, if present, is to be deemed to have committed the offence, though in point of fact another actually committed it.—4 Mad. Rep., Rul. xxxvii.

HELD that it is necessary, in order to justify a conviction under s. 201, that an offence for which some person has been convicted or is criminally responsible should have been committed.—*Empress v. Abdul Kadir*, I. L. R., 3 All. 279.

THE accused, on his arrest, denied all knowledge of an offence in which he really took part. *Held* that he could not be convicted, under s. 201, of giving false information respecting an offence.—*Fakir-ud-din v. The Crown*, Panj. Rec., No. 4 of 1877, Cr.

S. 201 refers to others than the actual criminals who, by causing disappearance of evidence, assist the principals to escape. The person who commits an offence, and afterwards conceals the evidence of it, cannot be punished on both heads of the charge.—7 W. R. 52, Cr.

WHERE a person is charged with giving false information under this section with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoner in respect to their guilt.—8 W. R. 68, Cr.

IN order to bring a prisoner within s. 114, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed.—*Queen v. Mussamut Niruni and Moniroodeen*, 7 W. R. 49, Cr.

A PERSON cannot be punished under s. 201 where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment. It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender.—*Queen v. Tulsi Rai and Ram Lal Rai*, 5 N. W. P. 186.

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under s. 201, Penal Code.—*Queen v. Goburdhun Bera*, 6 W. R. 80, Cr.

A COMMITS no offence if, in exercising the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random and in the dark with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted, under s. 201, of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender.—*Reg. v. Pelko Nushyo and others*, 2 W. R. 43, Cr.

K AND B, having caused the death of J in a field belonging to B, removed J's dead body from that field to his own field with the intention of screening themselves from punishment. K was convicted on these facts of an offence under s. 201. *Held* that that section referred to persons other than the actual offenders, and K could not therefore properly be punished under that section for what he had done to screen himself from punishment. Also that, as a matter of fact, he did not, by removing J's corpse from one field to another, cause any evidence of J's murder, which that corpse afforded, to disappear, and his act, although his object may have been to divert suspicion from himself, did not constitute the offence defined in that section.—I. L. R., 2 All. 713.

A WOMAN who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child, which was missing. *She*

made three different statements : (1) that she had left it with her husband ; (2) that she had been enticed away by one R who had taken the child from her ; (3) that one H had drowned the child. The Sessions Judge believed the last statement, and convicted her under s. 201 of the Penal Code. *Held* that the conviction was wrong, and must be set aside. Section 201 does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another.—In the matter of the petition of Behala Bibi. *The Empress v. Behala Bibi*, I. L. R., 6 Cal. 789.

THE above section refers to persons (other than the actual criminals), who, by their causing evidence to disappear, assist the principal to escape the consequences of his offence. Thus, in *Reg. v. Kashinath Dinkar, Lloyd, J.*, observed. "This and the two following sections commence with precisely the same words. Now, as there is no law which obliges a criminal to give information which would convict himself, it is evident that ss. 202 and 203 could not apply to the person who committed the offence, i.e., the offence which he knew had been committed." A prisoner pushed a woman, who fell into a boat, and died then and there. Afterwards he set the boat with the corpse in it afloat down the river, and so concealed the evidence of his offence. It was held that he was not guilty of the offence of causing evidence to disappear.—*Reg. v. Ramsoonder Shootar*, 1 R. C. C. Circ. 19 ; 2 Mad. Jur. 282.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

WHERE *corpus delicti* is not established, there can be no conviction for culpable homicide (not amounting to murder), nor under s. 202, Penal Code.—4 W. R. 29, Cr.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years,

A PRISONER's intention is immaterial to his conviction, under s. 203, of having given false information respecting an offence committed.—*Reg. v. Chetour Chowkeedar*, 1. W. R. 18, Cr.

Presy. Mag.
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A PERSON merely withholding a document, or not producing it on a false pretence, cannot be convicted of the offence of secreting such document specified in this section.—3 N. A., N. W. P., Part I., 64.

WHERE the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it: *Held* that the offence committed was not theft, but secreting a document under s. 204.—*Subramánia Ghanapáti, Prisoner, v. The Queen, I. L. R., 3 Mad. 261.*

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

False personation for purpose of act or proceeding in suit. *or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

Cl. of Sev., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

FRAUDULENT gain or benefit is not an essential element of the offence created by this section, and a conviction is therefore sustainable, even where the personation is with the consent of the party personated.—*Ex parte Suppakon, 1 Mad. H. C. Rep. 450.*

It is absolutely necessary to a conviction for false personation under s. 205 that the accused should have assumed the name and character of the person he is charged with having personated. The mere fact that he presented a petition in Court in the name of that individual who was ill is insufficient to show any intention of falsely personating such person.—*Reg. v. Narain Acharji, 8 W. R. 80, Cr.*

To constitute false personation under s. 205, it is not enough to show the assumption of a fictitious name. It must also be shown that the assumed name was used as a means of representing some other known individual. A mere "alias" or "incog." is no crime, for it is no uncommon thing for men to pass under names not their own for the purpose of disguise, in some instances from blameless, in others from indifferent or bad motives. But whatever the motive, the use of an assumed name is not in itself a criminal offence. The gist of the offence under s. 205 is the feigning to be another known person. The whole language of the section clearly imports the acting the part of another person, the actor pretending that he is that person. There are sections of the Penal Code (for instance, ss. 140, 170, 171, and 415) under which the false assumption of appearance or character may be an offence, though no particular individual is meant to be represented, or only an imaginary person; but it is not so here. *Reg. v. Bhitto Kular, 1 Ind. Jur. 123, dissented from.—Reg. v. Kadar Raouttan and Ayanganu Raouttan, 4 Mad. Rep. 18; 3 Mad. Jur. 146.*

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree. *or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

A PERSON who fraudulently removes property, intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under s. 106, Penal Code, and not under s. 145, Act X., 1859.—*Gour Chunder Chuckerbutty v. Kishen Mohun Singh, 10 W. R. 46, Cr.*

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

A PERSON applying for the execution of a decree already executed commits an offence, not under s. 209, but under s. 210.—*Reg. v. Begum Mahtoon*, 17 W. R. 37, Cr.

Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A PERSON applying for the execution of a decree already executed commits an offence, not under s. 209, but under s. 210.—*Reg. v. Begum Mahtoon*, 17 W. R. 37, Cr.

211. Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Presy. Mag.
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.
Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

WHERE a man burns his own house, and charges another with doing so, he should be convicted under s. 211, not under s. 195.—8 W. R. 65, Cr.

S. 211 applies not only to a private individual, but also to a police-officer who brings a false charge of an offence with intention to injure.—11 W. R. 2, Cr.

FALSE charge under s. 211, and false evidence under s. 193, are not cognate offences, nor parts of the same offence, but may be punished separately.—7 W. R. 59, Cr.

TO CONSTITUTE the offence of making a false charge under s. 211 it is enough that the false charge is made, though no prosecution is instituted thereon.—I. L. R., 1 All. 497, 527.

THE mere fact of a charge having been dismissed is not evidence of its falsity. The falsity of a charge must be shown by positive evidence.—Reg. v. Ram Dass Boistub, 11 W. R. 35, Cr.

IT was held to be illegal for a Magistrate to sanction a prosecution under s. 211 without giving the petitioner an opportunity of adducing evidence to prove that the charge which he made was a true one.—25 W. R. 10, Cr.

WHERE a prisoner is charged under s. 211, it is for the prosecution to make out a distinct case against him, not for him to show that he had just or lawful grounds for making the charge.—Reg. v. Nobokisto Ghose, 8 W. R. 87, Cr.

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder was quashed, because it was not distinctly shown that he preferred the charge *malâ fide*.—Queen v. Muthooru Pershad Panday, 2 W. R. 10, Cr.

TO PREFER a complaint to the police in respect of an offence which they are competent to deal with, and thereby to set the police in motion, is to institute a criminal proceeding within the meaning of s. 211.—Reg. v. Bonomally Sobai, 5 W. R. 32, Cr.

TO establish a charge under s. 211, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. Under s. 205, it is criminal to personate an imaginary person.—Queen v. Bitoo Kahar, 1 Ind. Jur., O. S., 123.

THE mere fact that an accuser (in this case a subordinate police-officer) is an official in a subordinate position will not shield him from the consequences of false and malicious charges made by him officially.—Reg. v. Rhedoy Nath Biswas, 2 W. R. 45, Cr.

WHERE a charge of theft was reported by the police to be false: Held that the Magistrate ought to have enquired into the charge of theft and passed some orders upon it, before proceeding under s. 211 to enquire into the offence of false charge.—16 W. R. 77, Cr.

There is nothing in s. 211 which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice. A false charge made before the police is therefore punishable under this section.—I. L. R., 5 Cal. 281.

It is necessary for a conviction under s. 211 that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial.—In the matter of the petition of Jamoona. *The Empress v. Jamoona*, I. L. R., 6 Cal. 620.

S. 211 HAS been held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning.—*Raifee Mahomed v. Abbas Khan*, 8 W. R. 67, Cr.

To constitute the offence of preferring a false charge under s. 211, the charge need not be made before a Magistrate; nor need the charge have been fully heard and dismissed; it is enough if it is not pending at the time of trial.—*Queen v. Subbanna Gaundan and others*, 1 Mad. Rep. 30.

WHERE a charge of theft was reported by the police to be false, it was held that the Magistrate ought first to have inquired into the charge of theft, and passed some orders upon it, before proceeding under s. 211 to enquire into the offence of false charge.—*Bishoo Barik, Appellant*, 16 W. R. 77, Cr.

A SANCTION for a prosecution for making a false charge under s. 211 without hearing all the witnesses whom the person accused of making the false charge wishes to produce is illegal. The High Court has power to quash an illegal commitment at any stage of the case.—*Empress v. Shibo Behara*, I. L. R., 6 Cal. 584.

WHERE accused preferred a false charge against complainant under s. 342, and was in consequence tried and convicted by the same Court under s. 211, held by a majority of the Court (Campbell, J., dissenting) that the Magistrate had no jurisdiction to try the offender.—*The Crown v. Hassan Ali*, Panj. Rec., No. 3 of 1877, Cr.

A COMMITMENT for trial under the provisions of s. 211 for knowingly instituting a false charge with intent to injure the persons accused is not illegal, merely because the complaint which the accused made has not been judicially enquired into but is based on the report of the police that the case was a false one.—*Empress v. Salik Roy*, I. L. R., 6 Cal. 582.

A FALSELY, and with intent to injure, informed the police that B had stolen property in his house. The police searched B's house, and the information proved to be false. Held that A had instituted criminal proceedings, and that he was therefore guilty of an offence under s. 211, and not under s. 182.—*Muthra v. Rooria*, Panj. Rec., No. 16 of 1870, Cr.

No charge of making a false charge can be proved while the original charge is still under investigation, as it may turn out that the Court conducting the investigation may say that it is a true charge; but it is not necessary that the charge should be heard and dismissed; it is sufficient if it be not pending at the time of the trial.—*Reg. v. Subbanna Gaundan*, 1 Mad. H. C. Rep. 30.

A CRIMINAL prosecution for an offence under s. 211 is not a condition precedent to the right to sue for damages. The bringing of a civil suit imports no corrupt agreement or compounding of the offence in such a case. *Shama Churn Bose v. Bhola Nath Dutt* (6 W. R., Civ. Ref., 9) followed.—*Viranna and others (Plaintiffs), Petitioners, v. Nagáyyah (Defendant), Counter-Petitioner*, I. L. R., 3 Mad. 6.

MERE rashness in making a charge, which is in fact believed, is not an offence under s. 211. If an accused person does not know at the time he makes the complaint that there are no just and lawful grounds for making the complaint, he cannot be convicted under s. 211. The fact that information upon which a false charge was preferred was not carefully tested by the complainant is not a ground for indictment under s. 211.—2 R. C. C. R. 11.

WHERE a Deputy Magistrate dismissed a complaint, and directed the complainant to be tried under s. 211, without recording his reasons for so doing, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present, it was held that such Deputy Magistrate had acted irregularly.—*Reg. v. Heeralall Ghose*, 13 W. R. 37, Cr. See also 16 W. R. 44, Cr.

It is not a sufficient ground for a charge under s. 211 that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or a statement which is not or ought not to be sufficient to satisfy a reasonable mind, if in truth he did not know at the time he made the complaint that there was no just and lawful grounds for making it.—*Reg. v. Pran Kishen Bid*, 6 W. R. 15, Cr.

In a case of false charge, the Magistrate gave the accused A permission to prosecute the complainant B for an offence under s. 211. The Magistrate tried A's complaint as one under s. 211, but he subsequently proved a charge against B under s. 182, and punished him under that section. *Held* that the Magistrate was wrong in framing the charge under s. 182 without the previous sanction of the Criminal Court which heard the previous complaint of B.—13 W. R. 67, Cr.

WHERE a Magistrate dismisses a complaint as a false one under s. 147 of the Criminal Procedure Code (corresponding with s. 203 of Act X. of 1882), and decides to proceed against the complainant under s. 471 (corresponding with s. 476, Act X. of 1882), for making a false charge, he is not bound, before so proceeding, to give the complainant an opportunity of substantiating the truth of the complaint by being allowed to produce evidence before him.—*Empress v. Bhawani Prasad and another*, I. L. R., 4 All. 182.

WHERE a person is charged, under s. 211, with having, with intent to injure, falsely charged another with an offence knowing that there is no just or lawful ground for the same, the party accused should be allowed to show the information on which he acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him.—*Reg. v. Nevalaulvalad Umedmal*, 3. Bom. Rep., C. A., 16.

BEFORE a person can be put upon his trial for making a false charge under s. 211, he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, not before the police, but before the Magistrate. Magistrates should clearly understand that whilst the police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of such evidence when collected.—*Government v. Karimdad*, I. L. R., 6 Cal. 496.

A PERSON may in good faith institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them; but in neither case has he committed an offence under s. 211. To constitute this offence it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings. The averment that the accused knew that there was no lawful ground for the charge instituted is a most material one.—*Queen v. Chidda*, 3. N. W. P. 327.

A MAGISTRATE should not direct a prosecutor to be put upon his trial under s. 211 without first giving him an opportunity of obtaining a judicial enquiry into the charge originally preferred by him. The sanction to prosecute, contemplated in s. 468 of the Criminal Procedure Code (corresponding with s. 195, Act X. of 1882), is not a direction to prosecute, but is a permission granted to a private person to exercise his own unfettered discretion as to whether he will take proceedings or not.—In the matter of the petition of Giridhari Mondul and another. *Gridhari Mondul v. Uchit Jha*, I. L. R., 8 Cal. 437.

L was charged by S with offences under ss. 193 and 218, and also accused of acts amounting to offences punishable under s. 466 with seven years' imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial, charged under s. 218, and acquitted by the Court of Session. The Court of Session then, under Act X. of 1872, s. 472 (corresponding with Act X. of 1882, s. 477), charged L with offences punishable under ss. 193, 195, 211, and 109 of the Penal Code, and committed him for trial: *Held* that such commitment was not bad because it included the charge under s. 193, such an offence not being exclusively triable by a Court of Session.—I. L. R., 2 All. 398.

WHERE a charge had been preferred against a person, and the Magistrate, before whom it was heard, after hearing the statement of the complainant, but not those of the witnesses, dismissed the complaint; and subsequently, on the application of the person charged, granted him leave under s. 470 to prosecute the complainant for bringing a false charge: *Held* that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done. *Held* also that there is a distinction in the proceedings to be adopted when a sanction is given under s. 470, and the institution by the Court of its own motion of proceedings under s. 471.—In the matter of Gyan Chunder Roy v. Protap Chunder Dass, I. L. R., 7 Cal. 208.

INSTITUTING a criminal proceeding with intent to injure, knowing that there is no just or lawful ground for such proceeding, may be treated as a distinct offence from that of falsely charging a person with having committed an offence. A police-officer, though acting upon the information of an informer, may be said to institute a criminal proceeding against the person charged by him; and the consent of his superior officer to such charge will be no guarantee against the consequences of bad faith on his part. The prosecution, when establishing the fact that a police-officer acted knowing there to be no just grounds for proceeding, is bound to call all those on whose statements such officer said he acted.—*Reg. v. Nobokisto Ghose*, 8 W. R. 87, Cr., and 5 R. C. C. R. P.

WHERE A and F were convicted of culpable homicide, and one G H petitioned the Lieutenant-Governor for their release, on the ground that the accusation was a false one, got up by one S K from enmity; whereupon S K charged G H with making a false charge with intent to injure, and procured his conviction under s. 211. *Held* that G H was wrongly convicted under that section. To constitute the offence of "falsely charging a person with having committed an offence," within the meaning of s. 211, something more is necessary than to impute against a person that he has committed an offence. The "charge" contemplated in the section means a charge made in order to the institution of criminal proceedings.—*Ghulam Hussain v. The Crown*, Panj. Rec., No. 14 of 1879, Cr.

THE accused instituted a complaint under s. 419, which was dismissed. The Court which dismissed the complaint tried and convicted the accused under s. 211. *Held* that the Court in question had no jurisdiction, under s. 473, Criminal Procedure Code (corresponding with s. 487, Act X. of 1882), to try the accused, as having referring a false charge was a contempt of that Court. *Held* (by Lindsay, J.) that as the accused had not been prejudiced, the Chief Court, exercising its discretion under s. 297, Criminal Procedure Code (corresponding with s. 439, Act X. of 1882), should not order a new trial. *Held* (by Boulnois and Melville, JJ.) that there was a fatal defect in the jurisdiction of the Court below, and that there should be a re-trial by a competent Court.—*Nuthir v. The Crown*, Panj. Rec., No. 3 of 1875, Cr.

NIHALA informed a police-sergeant that a burglary had been committed, and that he suspected Ramkishen. In consequence of this information, Ramkishen's premises were searched, and some property belonging to Nihala was found. Ramkishen was arrested, but upon investigation the Magistrate found that Nihala had himself placed the property where it was discovered. Ramkishen was accordingly discharged, and he then brought a charge against Nihala under s. 211, who was committed to the Deputy Commissioner for trial, but acquitted on the ground that he (Nihala) had never made any charge against Ramkishen, but had merely stated that he suspected him. On the revision side, the Chief Court held that the facts disclosed an offence under s. 211, and directed a new trial.—*The Crown v. Nihala*, Panj. Rec., No. 14 of 1872, Cr.

UPON a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local enquiry by a competent police-officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner, who ordered the prosecution, and the prisoner was convicted. *Held* that the conviction was bad. The Extra Assistant Commissioner should, on receipt of the report of the police, have communicated its contents to the prisoner, and afforded her an opportunity of substantiating her complaint, and should then have decided the case.—In the matter of the petition of Sokhina Bibi. *The Empress v. Grish Chunder Nundi*, I. L. R., 7 Cal. 87.

A PRISONER, charged under s. 211 with having brought a false charge with intent to injure, by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304a, stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by s. 237 of the Criminal Procedure Code (corresponding with s. 271, Act X. of 1882), appeared on the proceedings; nor did it appear that the charge had been explained as well as read to the prisoner; and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304a. *Held* that the conviction was bad.—*Empress v. Gopal Dhanuk*, I. L. R., 7 Cal. 96.

B CHARGED certain persons before a police-officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B on a charge of making a false charge of an offence—an offence punishable under s. 211—and convicted him of that offence. *Held* that, as such false charge was not preferred by B before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 468 and 473 of Act X. of 1872 (corresponding with ss. 195, 487, of Act X. of 1882) were inapplicable, and such Magistrate was not precluded from trying B himself, nor was his sanction or that of some superior Court necessary for B's trial by another officer. *Empress v. Kashmiri Lal* (I. L. R., 1 All. 625) distinguished. Observations by Stuart, C.J., on the careless manner in which the charge in this case was framed.—*Empress of India v. Baldeo*, I. L. R., 3 All. 322.

212. Whenever an offence has been committed, whoever harbours or

Harbouring an offender—

of screening him from

If a capital offence;

to five years, and shall also be liable to fine; and, if the offence is punishable

If punishable with transportation for life, or with imprisonment.

conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished* with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished* with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished† with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

* Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

† Presy. Mag.
or Mag. of 1st
class, or
Court by
which offence
is triable.
Cognizable.
Warrant.
Bailable.
Not comp.

To support a conviction under s. 212, there must be evidence (a) of an offence committed which the accused could have intended to screen, and (b) of harbouring or concealing the offender. A chaulkdar and a patwari concocting together, and letting a thief go, do not come under s. 212.—*The Crown v. Kala Sing*, Panj. Rec., No. 21 of 1867, Cr.

* Ct. of Ses.

Uncog.

Warrant.

Bailable.

Not comp.

213. Whoever accepts, or attempts to obtain, or agrees to accept, any

Taking gift, &c., to screen
an offender from punish-
ment—gratification for himself or any other person,
or any restitution of property to himself or any
other person, in consideration of his concealing

an offence, or of his screening any person from legal punishment for any

+ Ct. of Ses.,

Presy. Mag.,

or Mag. of 1st

class.

Uncog.

Warrant.

Bailable.

Not comp.

If a capital offence ;

with death, be punished* with imprisonment of
either description for a term which may extend
to seven years, and shall also be liable to fine ; and, if the offence isIf punishable with trans-
portation for life, or with
imprisonment.punishable with transportation for life, or with
imprisonment which may extend to ten years,
shall be punished† with imprisonment of either

description for a term which may extend to three years, and shall also

or Mag. of 1st

class, or

Court by

which offence

trialable.

Uncog.

Warrant.

Bailable.

Not comp.

not extending to ten years, shall be punished‡ with imprisonment of the
description provided for the offence for a term which may extend to
one-fourth part of the longest term of imprisonment provided for the
offence, or with fine, or with both.A DEPUTY Magistrate vested with the powers of a Subordinate Magistrate of
the second class is not competent to initiate a charge under s. 213.—6 W. R. 90, Cr.

/ Ct. of Ses.

Uncog.

Warrant.

Bailable.

Not comp.

214. Whoever gives or causes, or offers or agrees to give or cause,

Offering gift or restoration
of property in consideration
of screening offender—any gratification to any person, or to restore or
cause the restoration of any property to any
person, in consideration of that person's conceal-

ing an offence, or of his screening any person from legal punishment

for any offence, or of his not proceeding against any person for the

purpose of bringing him to legal punishment, shall, if the offence is

punishable with death, be punished* with im-
prisonment of either description for a term

which may extend to seven years, and shall also be liable to fine ; and,

if the offence is punishable with transportation

for life, or with imprisonment which may extend

to ten years, shall be punished† with imprison-

ment of either description for a term which may extend to three years,

and shall also be liable to fine ; and, if the offence is punishable with

imprisonment not extending to ten years, shall be punished‡ with im-
prisonment of the description provided for the offence for a term which

may extend to one-fourth part of the longest term of imprisonment

provided for the offence, or with fine, or with both.

+ Ct. of Ses.,

Presy. Mag.,

or Mag. of 1st

class.

Uncog.

Warrant.

Bailable.

Not comp.

“Exception.—The provisions of sections 213 and 214 do not extend
to any case in which the offence may lawfully be compounded.”This Exception has been substituted by Act VIII. of 1882, s. 6, for the one ori-
ginally enacted ; and the Illustrations have been repealed by Act X. of 1882.A WARRANT-CASE of a nature not compoundable under s. 214 was “dismissed”
on the parties coming to an amicable settlement : *Held* that the “dismissal” was
equivalent to a discharge, and that the composition did not affect the revival of the
prosecution, if that should otherwise be thought necessary or expedient.—I. L. R., 1
Bom. 64.

+ Presy. Mag.

or Mag. of 1st

class, or

Court by

which offence

trialable.

Uncog.

Warrant.

Bailable.

Not comp.

215. Whoever takes, or agrees or consents to take, any gratification

Taking gift to help to recover stolen property, &c.

under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag. or Mag. of 1st class.
Uncog.
Warrant.
Bailable.
Not comp.

216. Whenever any person convicted of or charged with an offence,

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered—

being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say, if the offence for which the person was in custody or is ordered

* Ct. of Ses., Presy. Mag., or Mag. of 1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

If a capital offence;

to be apprehended is punishable with death, he shall be punished* with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; if the offence is punishable with transportation for life, or imprisonment for

If punishable with transportation for life, or with imprisonment.

ten years, he shall be punished* with imprisonment of either description for a term which may extend to three years, with or without fine; and, if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished† with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

† Presy. Mag. or Mag. of 1st class, or Court by which offence triable.
Cognizable.
Warrant.
Bailable.
Not comp.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

217. Whoever, being a public servant, knowingly disobeys any

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

WHERE a village-accountant and a village-munsif's peon had been convicted, under s. 217, of having disobeyed the direction of law contained in Act X. of 1872, s. 90 (corresponding with Act X. of 1882, s. 43): Held that they were wrongfully convicted as not hearing the character which raises the obligation under the latter section.—I. L. R., 1 Mad. 266.

To SUSTAIN a conviction under s. 217, it must be proved that the accused knew that the person he released was in danger of punishment, and that the accused acted with the intention of saving such person.—*In re Abdool Julleel*, 2 R. J. P. J. 112.

THE direction of law mentioned in s. 217 means a positive direction of law such as those contained in Act X. of 1872, ss. 89 and 90 (corresponding with Act X. of 1882, ss. 44, 43), and cannot be made to extend to the mere general application on every subject not to stifle a criminal charge.—I. L. R., 1 Mad. 266.

THE accused was charged under s. 217, but the charge did not distinctly state what the direction of the law was which he disobeyed, and how he disobeyed it: *Held* that, when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial.—I. L. R., 2 Bom. 142.

SEVERAL persons were apprehended at night-time on suspicion of having committed culpable homicide. The police-officer tied them together by the hands, and kept them in the village in which they had been arrested, instead of at once taking them to the nearest police-station. The prisoners escaped in the course of the night. To render s. 217 applicable, two conditions must be fulfilled: 1st, there must be an intentional disobedience of a rule of law; 2nd, there must be a knowledge that the offender, by disobedience, will save a person from legal punishment. If the police-officer's intention in keeping the prisoners in the village was merely to wait until it was more convenient to start, the disobedience of this rule of law was not such a disobedience as this section contemplates. In this case it was held that the police-officer had not committed an offence under s. 217.—*Reg. v. Ootum Chund*, Panj. Rec., No. 18 of 1871, Cr.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A CONVICTION under s. 218 was quashed, because the intention with which the prisoner was charged, *viz.*, to cause loss or injury to the sub-inspector, was held to be too remote to fall within the section.—19 W. R. 40, Cr.

WHERE a *kulkarni* made a false report with reference to an offence committed at his village with any of the intents mentioned in s. 218, it was held that he was punishable under this section.—*Reg. v. Malhar Ramchandra*, 7 Bom. H. C. Rep. C. C. 64.

WHERE A intentionally read out false abstracts of papers to B, who was preparing a record, and B innocently produced what was a false record, it was held that A had committed, not an offence under s. 218, but an abetment of such offence.—7 N. W. P. 134.

A POLICE-OFFICER negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29, Act V. of 1861, where the proof is insufficient to bring the case under s. 217 or 218, Penal Code.—*Reg. v. Boroda Kant Mookopadhya*, 15 W. R. 17, Cr.

UNDER s. 218 the intention of the accused is an essential ingredient in the offence. Thus, where a person is charged under s. 218 with framing a report incorrectly, or under s. 201 with giving false information with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were, in

fact, guilty or not, but merely the belief and intention of the prisoner in respect to their guilt.—Reg. v. Shama Churn Roy, 8 W. R. 27, Cr.

L was charged by S with offences under ss. 193 and 218, Penal Code, and also accused of acts amounting to offences punishable under s. 466 with seven years' imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial charged under s. 218, and acquitted by the Court of Session. The Court of Session then, under Act X. of 1872, s. 472 (corresponding with Act X. of 1882, s. 477), charged L with offences punishable under ss. 193, 195, 211, and 211 and 109, Penal Code, and committed him for trial: Held that such commitment was not bad because it included the charge under s. 493, such an offence not being exclusively triable by a Court of Session—I. L. R., 2 All. 398.

219. Whoever, being a public servant, corruptly or maliciously

Public servant in judicial proceeding corruptly making report, &c., contrary to law.

makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either

description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

220. Whoever, being in any office which gives him legal au-

Commitment for trial or confinement by person having authority who knows he is acting contrary to law.

thority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person

in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

221. Whoever, being a public servant, legally bound as such public

Intentional omission to apprehend on part of public servant bound to apprehend.

servant to apprehend or to keep in confinement any person charged with, or liable to be apprehended for, an offence, intentionally omits to

apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape, from such confinement, shall be punished as follows, that is to say:—

With imprisonment* of either description for a term which may

Punishment. extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

With imprisonment† of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years; or

With imprisonment‡ of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

* Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

† Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

‡ Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

AN offence falling under the Police Act and also under the Penal Code should be punished under the Code. Where a police-constable allowed a prisoner to escape from the *havadat* while the former was on duty as sentry, and was sentenced, on conviction by the Magistrate, to forfeit three months' pay under s. 29, Act V. of 1861, the Chief Court held that the conviction must be quashed, and the accused tried under s. 221.—*The Crown v. Futteh Khan*, Panj. Rec., No. 11 of 1874, Cr.

A CHAUKIDAR, or village-watchman, is not legally bound as a public servant to apprehend a person accused of committing murder outside the village of which he is chaukidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder, and consequently such chaukidar, if he refuses to apprehend such person on such charge at the instance of a private person, is not punishable under s. 221, Penal Code.—*Empress v. Kallu* and another, I. L. R., 3 All. 60.

222. Whoever, being a public servant, legally bound as such public

Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed.

servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, or lawfully committed to custody,† intentionally omits to apprehend such person, or intentionally suffers such person to

escape, or intentionally aids such person in escaping or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

* Ct. of Ses.
Unocog.
Warrant.
Not bailable.

With transportation* for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

With imprisonment* of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

† Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Unocog.
Warrant.
Bailable.
Not comp.

With imprisonment† of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.‡

Presy. Mag.
or Mag. of 1st
or 2nd class.
Unocog.
Summons.
Bailable.
Not comp.

223. Whoever, being a public servant, legally bound as such

public servant to keep in confinement any person charged with or convicted of any offence, or lawfully committed to custody,‡ negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CONVICT-WARDERS have been held to be public servants within the meaning of s. 223.—3 R. C. C. R. 35.

† See s. 8, Act XXVII., 1870.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

ESCAPES by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code.—Anonymous, 3 Mad. Rep. A. J. 11.

THE escape referred to in s. 224 means escape from custody for an offence, not escape from custody under civil process, which latter escape is not punishable.—6 Bom. H. C. Rep., Cr. Ca., 15.

THE separate commitment upon a charge under s. 224 of escape from lawful custody whilst under trial before the Sessions Court was cancelled, the offence being one cognizable by the Magistrate.—17 W. R. 14, Cr.

AN escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225.—Empress v. Shasti Churn Napit, I. L. R., 8 Cal. 331.

THE punishment for escape from lawful custody under s. 224, in a case in which that is one of the offences of which the prisoner is convicted, must be in addition to any punishment awarded for the substantive offence.—8 W. R. 85, Cr.

A PERSON who is detained in custody for the purpose of giving security for good behaviour, and escapes from that custody, has not committed an offence under s. 224, as he was not lawfully detained in custody for an offence.—7 Mad. H. C. Rep. 41. He is liable to be punished under s. 225A.—4 Mad. H. C. Rep. 152.

TO CONSTITUTE the offence of escaping from transportation under s. 226, it is essential that the convict should have been actually sent to a penal settlement, and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, held that he had committed an offence punishable under s. 224, and not under s. 226.—Queen v. Ramaswamy, 4 Mad. Rep. 153.

WHERE a person, apprehended on a charge of a cognizable offence, escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But if charged with a non-cognizable offence, the police-officer who apprehends him without a warrant does not have him in lawful custody, and his escape is not punishable under s. 224.—24 W. R. 45, Cr.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished* with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Resistance or obstruction to lawful apprehension of another person.

* Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Punishment.

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment

† Ct. of Ses., for a term which may extend to ten years, shall be punished† with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

Or, if the person to be apprehended, or rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished† with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

† Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

Or, if the person to be apprehended, or rescued or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished† with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended, or rescued or attempted to be rescued, is under sentence of death, shall be punished† with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

AN escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225.—*Empress v. Shasti Churn Napit*, 1. L. R., 8 Cal. 331.

A POLICE-OFFICER duly appointed under Act V. of 1861, and engaged in the discharge of any part of his duty as such police-officer, is competent, where an unlawful assembly takes place, to apprehend any of the members of such assembly ; and any one rescuing the party apprehended is rightly convicted under s. 225.—*Reg. v. Assam Shureef*, 13 W. R. 75, Cr.

WHERE substantially but one offence has been committed, and the acts, which are the basis of one charge, are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under s. 224 for escape, under s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force in so doing, and sentenced to separate punishments under each section, it was held that the prisoners had only done one act, and were guilty of only one offence, and should only have been found guilty under ss. 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly.—*Reg. v. Kalisankar Sandyal and others*, 3 B. L. R., App. Cr. 14.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Bailable.
Not comp.

225A. Whoever escapes or attempts to escape from any custody in

Escape from custody for which he is lawfully detained for failing, under failing to furnish security the Code of Criminal Procedure, to furnish security for good behaviour, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

226. Whoever, having been lawfully transported, returns from

Unlawful return from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

TO CONSTITUTE the offence of escaping from transportation under s. 226, it is essential that the convict should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, *held* that he had committed an offence punishable under s. 224, and not under s. 226.—*Queen v. Ramaswamy*, 4 Mad. Rep. 153.

227. Whoever, having accepted any conditional remission of Court by Violation of condition of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

remission of punishment. on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

which original offence triable. Uncog. Summons. Not bailable. Not comp.

228. Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Intentional insult or interruption to public servant sitting in any stage of a judicial proceeding.

ruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Court in which offence committed, subject to provisions of ch. 35. Uncog. Summons. Bailable. Not comp.

It is not an offence under s. 228 to leave Court when directed to remain, or to make signs from outside to a prisoner on his trial.—*Mad. H. C. Rul.*, Jan. 17, 1870; Oct. 21, 1870.

PERSISTING in putting irrelevant and vexatious questions to a witness after warning might amount to a contempt.—*Azeemoola v. The Crown*, Panj. Rec., No. 44 of 1867, Cr.

PROCEEDINGS before a sub-registrar have been held to be judicial proceedings within the meaning of s. 228, he being a public servant.—*In re Sarahavi Lall*, 13 B. L. R. 40, App.

BEFORE a conviction can be had under s. 228, of offering an insult to a public servant, it must be proved that there was an *intention* to insult.—*Reg. v. Hurri Kishen Doss*, Police Inspector, 15 W. R. 62, Cr.

WHERE an offence under s. 228 has been committed before an officer while acting in a particular capacity, it was held that such officer cannot, in another capacity, take up and try the offence.—12 W. R. 18, Cr.

No conviction can be had under s. 228, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court.—*Reg. v. Chota Hurry Pramanick Tantee* and another, 15 W. R. 5, Cr.

A PARTY who bids for an estate at a sale in execution with the knowledge that he is not in a position to deposit the earnest-money obstructs the business of the Court, and is guilty of contempt of Court, punishable under s. 228.—W. R. Sp., Mis., 3.

THE above section, which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under chap. x. of the Penal Code, but extends to all.—I. L. R., 1 Bom. 339.

UNDER s. 228, it must be clearly stated both in the charge and in the conviction that the person insulted was sitting in a stage of a judicial proceeding, and the nature of such proceeding must also be stated.—*In re Prokash Chunder Doss*, 12 W. R. 64, Cr.

WHEN a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time.—*In the matter of Sitaran Atmaram*, 1 Ind. Jur. N. S. 23.

An appeal lies against an order of the Sessions Court imposing a fine upon a witness under s. 228 for intentional insult to the Sessions Judge sitting in a stage of a judicial proceeding. Where the High Court were satisfied that the witness did not intend to insult the Judge, the order was set aside.—*Queen v. Chuppu Menon*, 4 Mad. Rep. 146.

A BARRISTER, offended by the use of a strong expression on the part of a Judge while sitting in Court, sends an officer to the Judge's private residence upon a pacific errand to ask for an explanation. *Held*, by nine Judges out of eleven, that the party sending the message and the party conveying it are guilty of contempt of Court.—In the matter of *C. Piffard* and *E. G. Francis*, Hyde's Rep. 79.

A MAGISTRATE was held to have no jurisdiction in a case of contempt of Court committed before a Sub-Registrar who did not proceed under ss. 435 or 436, Act X. of 1872 (corresponding with ss. 180, 482, Act X. of 1882), the Sub-Registrar being a public officer under Act VIII. of 1871, his proceedings being judicial proceedings within the meaning of s. 228, Penal Code, and his Court a Court as defined in Act I. of 1872.—22 W. R. 10, Cr.

Presy. Mag.
or Mag. of 1st
class.
Uncoog.
Summons.
Bailable.
Not comp.

229. Whoever, by personation or otherwise, shall intentionally cause Personation of a juror or knowingly suffer himself to be returned, empanelled, or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or knowing himself to have been so returned, empanelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.*

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

Illustrations.

- (a.) Cowries are not coin.
- (b.) Lumps of unstamped copper, though used as money, are not coin.
- (c.) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d.) The coin denominated as the Company's rupee is the Queen's coin.

GOLD-mohurs have been held to be coins "for the time being" used as money within the meaning of s. 230.—5 N. W. P., H. C. R., 188.

It is not necessary, in order to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law. Gold-mohurs, which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX. of 1872.—*Reg. v. Kunj Behari*, 5 N. W. P. 187.

* See Act XIX., 1872.

S. 230 is an amended section. It has been amended by Act XIX. of 1872. The following are Mr. Hobhouse's object and reasons for the amendment: "The primary object of this Bill is to check the practice of counterfeiting the copper coin of Native States. These counterfeits are freely circulated in parts of British India, and the result is stated to be injurious to our currency. The Penal Code prohibits the counterfeiting of coin. But 'coin' is defined as 'metal stamped and issued by the authority of some Government,' and 'Government' by s. 17, denotes 'the person or persons authorized by law to administer executive government in any part of British India.' It has thus happened (accidentally no doubt) that the coin of Native States is not coin within the meaning of the Act. This defect it is desired to amend. The opportunity has been taken to make another amendment. S. 230 defines coin as metal 'used' as money. It has been suggested that the definition may possibly be held to include old coin, such as Graeco-Bactrian stater formerly used as money, but now regarded only as a curiosity. The Bill therefore proposes to introduce before 'used' the words 'for the time being.'"

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

WHERE a medal was fraudulently represented to an ignorant person as being money, it was held that the representation did not render the medal counterfeit coin.—Mad. H. C. Rul. 1864.

It is no offence under s. 231 to counterfeit coin not in ordinary use at the time of the counterfeit. Thus, where the counterfeit was of a coin of the Emperor Akbar, it was held to be no offence.—Reg. v. Babu Yadar, 11 Bom. H. C. Rep. 172.

THOUGH there may be an absence of apparent resemblance, which may possibly arise from the process being imperfectly carried out, yet there would still be an offence under s. 231. And even if the metal in which the counterfeit was made was completely different from that of the coin represented, it would still be a question of fact whether this difference did not arise merely from the manufacture having been interrupted in an early stage.—Mad. H. C. Rul., Nov. 17, 1863.

MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal, in mints established for the purpose, into small round pieces upon which a certain stamp was impressed, the stamp not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints and issue this copper as coin. Held that the pieces of copper were not counterfeit coin.—Premsookh Dass v. The Crown, Panj. Rec., No. 38 of 1870, Cr.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

TO CONSTITUTE the offence described in s. 232, there must be an intention that the coins made will be used as Queen's coin, or a knowledge that they are likely to be used as such. Such knowledge or intention will be inferred from the mere fact of counterfeiting, except under circumstances which conclusively negative it; but a distinction must be drawn between a deception practised for show merely, and one practised for wrongful loss or gain, and the former is not an offence under the Penal Code.—Shums-oo-deen v. The Crown, Panj. Rec., No. 26 of 1868, Cr.

223. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class,
Cognizable.
Warrant.
Not bailable.
Not comp.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished* with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the coin to be counterfeited is the Queen's coin, shall be punished† with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* Ct. of Ses.,
Presy. Mag.
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

† Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class,
Cognizable.
Warrant.
Not bailable.
Not comp.

MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal, in mints established for the purpose, into small round pieces upon which a certain stamp was impressed, the stamp not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints and issue this copper as coin. *Held* that the pieces of copper were not counterfeit coin.—*Premsookh Dass v. The Crown*, Panj. Rec., No. 38 of 1870, Cr.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

239. Whoever, having any counterfeit coin, which, at the time when

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

Delivery to another of coin, he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

S. 239 is directed against a person (other than the coiner) who procures, or obtains, or receives counterfeit coin, and not to the offence committed by the coiner. Where, therefore, a coiner had himself passed off a false coin, the conviction was quashed, s. 239 being held to apply to a person other than the coiner.—Queen v. Sheo Bux, *alias* Sheo Parshad, 3 N. W. P. 150.

240. Whoever, having any counterfeit coin which is a counterfeit

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

Delivery of Queen's coin, of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

WHERE the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—Parushullah Mundul v. Kheroo Mundul; Queen v. Gurib Shek; Ram Ruttan Saha v. Bawool Mundul, 23 W. R. 4, Cr.

241. Whoever delivers to any other person as genuine, or attempts

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit, to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

WHERE the prisoner, being in possession of a counterfeit coin, handed it to a friend, in order to avoid its being discovered by the police in his (prisoner's) possession, it was held that no offence had been committed under s. 241, as the coin was not delivered as genuine. The gist of an offence under s. 241 (passing as genuine coin known to be counterfeit) is that a person should deliver or attempt to induce any other person to receive as genuine coin known to be counterfeit.—Queen v. Sooruth, 4 N. W. P. 6.

WHERE the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—*Parushullah Mundul v. Kheroo Mundul*; *Queen v. Gurib Shek*; *Ram Ruttun Saha v. Bawool Mundul*, 23 W. R. 4, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A PRISONER, who was charged under s. 243, admitted possession, but denied fraudulent intention. In spite of the denial of fraudulent intention, the Sessions Judge recorded a plea of guilty, and convicted the accused thereon. In appeal it was held that the conviction was bad, as the admission of possession on the part of the prisoner did not extend to an admission of fraud, which was the gist of the offence.—5 N. A., N. W. P., Part II., 217, 1864.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from that fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class,
Cognizable.
Warrant.
Not bailable,
Not comp.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

Ditto.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

Ditto.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin possessed with knowledge that it is altered.

Ditto.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is altered.

Ditto.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

Ditto.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

Ditto.

thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Ditto.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may

be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Warrant.
Bailable.
Not comp.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognisable.
Warrant.
Bailable.
Not comp.

261. Whoever, fraudulently or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ditto.

262. Whoever, fraudulently or with intent to cause loss to Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Bailable.
Not comp.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Bailable.
Not comp.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

Presy. Mag. 266. Whoever is in possession of any instrument for weighing, or
or Mag. of 1st Being in possession of of any weight, or of any measure of length or
or 2nd class. false weights or measures. capacity, which he knows to be false, and
Unog. intending that the same may be fraudulently used, shall be punished
Summons. with imprisonment of either description for a term which may extend
Bailable. to one year, or with fine, or with both.
Not comp.

THE mere possession of false weights in excess of the authorized standard will not support a conviction under s. 266. A fraudulent intention must be charged and proved.—*Reg. v. Damodar Dalji*, 1 Bom. H. C. Rep. 181.

Ditto. 267. Whoever makes, sells, or disposes of, any instrument for
 Making or selling false weighing, or any weight, or any measure of
 weights or measures. length or capacity, which he knows to be false,
 in order that the same may be used as true, or knowing that the same
 is likely to be used as true, shall be punished with imprisonment of
 either description for a term which may extend to one year, or with
 fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

268. A person is guilty of a public nuisance, who does any act, or
Public nuisance. is guilty of an illegal omission, which causes
 any common injury, danger, or annoyance to
 the public or to the people in general who dwell or occupy property in
 the vicinity, or which must necessarily cause injury, obstruction, danger,
 or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes
 some convenience or advantage.

NUISANCES punishable under the Penal Code may still be made the subject of civil action, before or without prosecution.—*Jina Ranchhod v. Jodha Ghella*, 1 Bom. H. C. Rep. 1.

A COMMON gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268.—*Reg. v. Hau Nagji*, 7 Bom. H. C. Rep., Cr. Ca., 74.

WHERE, upon an indictment against a tinman for the noise made by him in carrying on his trade, it appeared in evidence that the noise only affected the inhabitants of three sets of chambers in Clifford's Inn, and that, by shutting the windows, the noise was, in a great measure, prevented, it was ruled by Lord Ellenborough, C.J., that the indictment could not be sustained, as the annoyance was, if anything, a private nuisance.—*Rex. v. Lloyd*, 1 Russ. 318.

AT a certain village where a fair was annually held, the lambardárs made arrangements at the time of the fair every year for the public sanitation of the place. In March, 1875, the Deputy Commissioner, going to the place, found that the usual arrangements had not been made for the fair, and that the public road was several hundred yards covered with fœtid matter. The Deputy Commissioner tried the lambardárs for committing a public nuisance, and convicted them. *Held* (by the Chief Court) that the conviction was bad, as there was no legal omission on the part of the lambardárs.—*The Crown v. Guj Singh, Panj. Rec.*, No. 11 of 1875, Cr.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of any disease dangerous to life. *Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.*

ACCUSED were convicted, under s. 269, for allowing accumulation of filth and manure in their villages. *Held* that this could not be construed into an act likely to spread infection of dangerous disease within the meaning of the section.—*The Crown v. Buta Singh*, Panj. Rec., No. 25 of 1872, Cr.

270. Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Malignant act likely to spread infection of any disease dangerous to life. *Ditto.*

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places,* shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Disobedience to a quarantine-rule. *Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.*

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of food or drink intended for sale. *Ditto.*

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink. *Ditto.*

ACCUSED sold a quantity of *atta* at the rate of 18 seers per rupee, the price of *atta* of good quality being a rupee for fifteen seers. A medical officer deposed that the *atta* was "old and gritty," and "would be bad for the health, if eaten." ACCUSED told the purchaser at the time of the sale that the *atta* was being sold cheap because it was "bad" or of an inferior quality: *Held* that the facts did not warrant a conviction under s. 273.—*The Crown v. Gunesha*, Panj. Rec., No. 15 of 1873, Cr.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, intending that it shall be sold or used for

Adulteration of drugs. *Ditto.*

* See Act I., 1870 (to provide rules relating to

or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

THE term "public spring" in s. 277 does not include a continuous stream of water running along the bed of a river.—*Queen v. Vitti Chokkan and others*, I. L. R., 4 Mad. 229.

THE words, "public spring or reservoir," used in s. 277, do not include a public river. The strewing of branches in a river for fishing purposes was therefore held to be no offence under that section.—I. L. R., 2 Cal. 383.

Any Mag.
Uncog.
Summons.
Bailable.
Not comp.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

THE actual driver, and not the owner of the carriage, is liable under s. 279, in case of a collision and injury arising out of rash driving.—*Mr. A. W. Larrymore v. Pernendoo Deo Rai*, 14 W. R. 32, Cr.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of a vessel.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Exhibition of a false light, mark, or buoy.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Conveying person by water for hire in a vessel overloaded or unsafe.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

THE unauthorized repairing of a public road is not an obstruction under s. 283.—7 W. R. 31, Cr.

BOATMEN who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under s. 282, and not under s. 336.—Reg. v. Khoda Jagta, 1 Bom. H. C. Rep. 137.

To spread fishing nets by the side of a thoroughfare in a town is neither an offence punishable under cl. 3, s. 48, Act XXIV., 1859, nor, without proof of obstruction caused to any particular person or class of persons, under s. 283, Penal Code. The Queen against Khader Moidin, I. L. R., 4 Mad. 235. The following is a full report of the case: "In this case the prosecutor (a policeman) deposed that he saw a bad-smelling net dried on the road by the side of the house of the first accused, so as to cause obstruction to persons passing by. The second accused admitted the net was his, and had been left there by him. The Magistrate convicted the second accused under cl. 3, s. 48, Madras Police Act (XXIV. of 1859), and fined him one rupee. The case was referred by the District Magistrate of Madura for the orders of the High Court on the ground that the action of the accused in drying nets in the street did not, in his opinion, constitute such an obstruction as is contemplated in cl. 3, s. 48, Act XXIV., 1859. No one appeared at the hearing. The Court (Innes and Muttusami Ayyar, JJ.) delivered the following judgment: 'Cl. 3, s. 48, Madras Police Act (XXIV. of 1859), under which the accused has been convicted, refers to obstruction of the road or street caused by *cattle* or by *conveyances*, in certain circumstances therein detailed. The act of the accused in spreading fishing nets by the side of the road was clearly, therefore, not punishable under this clause of s. 48 of the Act. The present conviction cannot also, in our opinion, be sustained as a conviction under s. 283, Penal Code, because, although it is stated in the evidence, in general terms, that obstruction was caused, it does not appear that obstruction was caused to any particular individual or individuals. The conviction is accordingly quashed. The fine collected from the accused must be refunded.'"

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Danger or obstruction in a public way or navigation.

Ditto.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Unoog.
Summons.
Bailable.
Not comp.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

THE word "injury" in s. 285 includes any harm caused to the property of any other person, and is not confined to injury to the person only.—Reg. v. Natha Lalla, 5 Bom. H. C. Rep., Cr. Ca., 67.

Ditto.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Unoog.
Summons.
Bailable.
Not comp.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

288. Whoever, in pulling down or repairing any building, negligently or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

A PONY is an animal within the provisions of s. 289.—19 W. R. 1, Cr.

To CONSTITUTE an offence under s. 289, there should be evidence, not only of negligence, but also that such negligence would probably lead to danger to human life or grievous hurt.—3 Mad. Rep. 33.

To sustain a charge under s. 289 there should be evidence not only of negligence, but also that such negligence would probably lead to danger to human life or of grievous hurt.—Anonymous, 3 Mad. Rep., A. J., 33.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine which may extend to two hundred rupees.

Any Mag.
Unleg.
Summons.
Bailable.
Not comp.

THE omission to keep one's ponies or buffaloes from straying is not a public nuisance under s. 290.—6 W. R. 71 Cr.; 9 W. R. 70, Cr.

THE establishment of a butcher's shop is not an indictable nuisance under s. 290, but may become a nuisance if it be carried on in such a way as to be offensive to a section of the community or without due regard to the feelings of any class.—Eesa v. Keemoo, Panj. Rec., No. 18 of 1867, Cr.

To sustain a charge of public nuisance under s. 290, it must be proved that injury, danger, or annoyance, has been caused, either in regard to the enjoyment of property, or the exercise of a public right, on the part of the portion of a community, or of any particular class of people. The fact that there is a special law to meet a particular offence (in this case cattle-trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could be rightly punished under the Penal Code was established.—Onooram v. Lamesoor, 9 W. R. 70, Cr.

CERTAIN Hindus charged certain Muhammadans with nuisance, in that they had opened a cook-shop, and carried on their business in a manner calculated to give annoyance. Disputes of this nature being frequent, the Magistrate ordered the shop to be closed, pending reference to a committee of respectable Hindus and Muhammadans of the city, in conjunction with whom he prepared and promulgated for observance by both sects a set of rules, which included rules for the management of a Hindu temple and a Muhammadan mosque in the neighbourhood. Held that the Magistrate had no authority to interfere in the management of the temple and mosque, and should have confined himself to deciding whether the shop complained of was or was not a nuisance; that that was a question which did not depend entirely on the shop being a cook-shop, or on beef being sold there (though that might, under certain circumstances, amount to a nuisance), but whether the business of the shop (in itself a lawful business) was or was not conducted in such a manner as to give annoyance to the public in the vicinity.—Assa Nund v. Hoossein Buksh, Panj. Rec., No. 15 of 1868, Cr.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognisable.
Warrant.
Bailable.
Not comp.

292. Whoever sells or distributes, imports or prints for sale or Sale, &c., of obscene hire, or wilfully exhibits to public view, any books. obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

A CHARGE under ss. 292 and 294 should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should, in his decision, state definitely what were the particular representations and words which he found on the evidence had been exhibited and uttered. Where no such specific decision has been come to, the High Court, when the case has been transferred under Act X. of 1875, s. 147 (corresponding with Act X. of 1882, s. 526), may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained.—I. L. R., 1 Cal. 356.

Ditto.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

A BOOK may be obscene, within the meaning of the Penal Code, although it contains but a single obscene passage. The defence to a charge of selling and distributing certain obscene books was that they were sold and distributed in good faith in prosecution of a religious controversy. *Held* that the excessive obscenity of such books took away the protection which their controversial nature might otherwise have afforded them. Also that the intention of the seller and distributor must be gathered from the character of the matter contained in such books. As he had chosen to sell and distribute what was obscene, it must be presumed that he intended the natural consequences of his act, namely, corruption of the minds and prejudice of the morals of the public. It was not sufficient for him to say that his intentions were good. It was his public act that must be the test of his intentions, and having done an unlawful act, it was no answer to say that he thought it lawful.—*Queen v. Hicklin* (L. R., 3 Q. B., 360) and *Steele v. Brannan* (L. R., 7 C. P., 261) followed. At the conclusion of the trial of a person for the sale and distribution of obscene books, the Court trying him ordered the destruction of certain copies of such books, voluntarily surrendered by him, under s. 418 of the Criminal Procedure Code (corresponding with s. 517, Act X. of 1882). *Held* that such Court was not empowered by that section to make such an order.—*Empress v. Indarman*, I. L. R., 3 All. 837.

Ditto.

294. Whoever sings, recites, or utters, in or near any public place, any obscene song, ballad, or words, to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

A MAGISTRATE, F. P., had convicted certain persons, under s. 294, for singing obscene songs, on a complaint charging them with repeating *lavnya*, which, though often, are not always obscene. There being no evidence that the *lavnya* repeated by the accused were obscene, the convictions and sentences were reversed.—*Reg. v. Ganu Krishna*, 4 Bom. H. C. Rep., Cr. Ca., 25.

A CHARGE under ss. 292 and 294 should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should, in his decision, state definitely what were the particular representations and words which he found on the evidence had been exhibited and uttered. Where no such specific decision has been come to, the High Court, when the case has been transferred under Act X. of 1875, s. 147 (corresponding with Act X. of 1882, s. 526), may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained.—I. L. R., 1 Cal. 356.

294A. Whoever keeps any office or place for the purpose of **Any Mag. Uncoog. Summons. Bailable. Not comp.**
 Keeping lottery-office. drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.*

No charge of an offence punishable under s. 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.—Act XXVII. of 1870, s. 14.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

295. Whoever destroys, damages, or defiles any place of worship, **Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.**
 Injuring or defiling place of worship, with intent to insult the religion of any class. or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

296. Whoever voluntarily causes disturbance to any assembly **Ditto.**
 Disturbing religious assembly. lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance **Ditto.**
 Trespassing on burial places, &c.

* See s. 10, Act XXVII., 1870.

to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

A, B, C, AND D, were co-owners of a plot of land in which they were accustomed to bury their dead. A and B opened a saw-pit close to the graves of D's relatives, but did not disturb any of the graves. Held that they were wrongly convicted under s. 297.—In the matter of Khaja Mahomed Hamin Khan and another, I. L. R., '3 Mad. 178.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncoog.
Summons.
Bailable.
Comp.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(a.) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(b.) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c.) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homi-

cide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

In order to constitute the offence of attempt to murder, under s. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter*, under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F. G. (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger: *Held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts, as laid down in *Reg. v. Collins* and the provisions of the Indian Penal Code, explained.—*Reg. v. Francis Cassidy*, 4 Bom. Rep., Cr., 17.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing

Murder.

death, or—

2ndly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or—

4thly, if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a.) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b.) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as, in the ordinary course of nature, would cause death.

(c.) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d.) A without any excuse fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender,

When culpable homicide is not murder. whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a.) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b.) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c.) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d.) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e.) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f.) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused,

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

THERE can be no conviction for abetment of murder without proof of murder.—*Queen v. Askur*, W. R., 1864, Cr., 12.

A SENTENCE of transportation other than for life is illegal in the case of a prisoner convicted of murder.—*Reg. v. Bhootoo Mullick*, 6 W. R. 85, Cr.

ON a conviction for murder, the only punishments that can legally be awarded are death or transportation for life.—*Reg. v. Bani Dass*, 14 S. W. R. 2, Cr.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—*Gholam Russool v. The Crown*, Panj. Rec., No. 32 of 1866, Cr.

THE absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder.—*Reg. v. Mahomed Elem Abdool Kureem*, 3 W. R. 40, Cr.

SENTENCE of confiscation of property in a case of murder annulled, as the accused had a mother and young children.—*The Crown v. Sunt Singh*, Panj. Rec., No. 35 of 1866, Cr.

A JUDGE was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found.—*Reg. v. Budderoodeen*, 11 W. R. 20, Cr.

WHEN murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death.—*Reg. v. Ruchee Ahen*, 2 W. R. 39, Cr.

WHEN prisoners confess in the most circumstantial manner to having committed a murder, the finding of the body is not absolutely essential to a conviction.—*Reg. v. Petta Gazi*, 4 W. R. 19, Cr.

A JUDGE convicting on a charge of culpable homicide not amounting to murder should record under which of the exceptions in s. 300 the case falls.—*Govt. v. Kalika Misser*, II. Ct., N. W. P., July 3, 1866.

THE High Court has no power, even where there is ground for doing so, to mitigate a sentence of transportation for life passed on persons found guilty of murder.—*Reg. v. Jamal*, 16 S. W. R. 75, Cr.

PROOF of motive of previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death.—*Reg. v. Jaichand Mundle and others*, 7 W. R. 60, Cr.

A CAPITAL sentence mitigated in a case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner.—*Reg. v. Bhekye, alias Sheikh Auser*, 1 W. R. 46, Cr.

WHERE an accused killed A, whom he had no intention of killing, by a blow with a highly lethal weapon intended to kill B, he was held guilty of the murder of A.—*Reg. v. Phomonee Ahum*, 8 W. R. 78, Cr.

IN ORDER to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence.—Reg. v. Muhomed Hossein, W. R. Cr. 31.

IN A case of murder by consent, *held* that evidence of consent which would be sufficient in a civil transaction must be equally sufficient in exculpation of a prisoner's guilt.—Reg. v. Anunto Rurnauyat, 6 W. R. 57, Cr.

CAPITAL sentence should be pronounced on a conviction for murder even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery.—Reg. v. Panhee Arnut, 15 S. W. R., Cr. R. 66.

THE sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion.—Reg. v. Tonoo and another, 6 W. R. 46, Cr.

THE words "or other thing" in s. 328 of the Penal Code must be referred to the preceding words, and be taken to "mean unwholesome or other thing," and not "other thing" simply.—Jotee Ghoraee, Appellant, 1 W. R. 7, Cr.

CURIOUS case of murder where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice.—Reg. v. Bishendhara Kahar, 7 W. R. 100, Cr.

THE prisoner, having struck the deceased a hasty but fatal blow with a stick in his hand at the time for amusing his mother, was held guilty of culpable homicide not amounting to murder.—Reg. v. Suleem Sheikh, 1 W. R. 23, Cr.

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder was quashed, because it was not distinctly shown that he preferred the charge *mala fide*.—Queen v. Muthoor Pershad Panday, 2 W. R. 10, Cr.

IN THIS case the prisoner was convicted of murder, but the intention of causing death not being fully established, the sentence of death was commuted to transportation for life.—Reg. v. Shobha Sheikh Gorman, W. R. 1864, 2, Cr.

HELD by the majority of the Court (*dissentiente* Seton Karr, J.) that the offence of administering deleterious drugs without endangering life is punishable under s. 328, and not under s. 326 as grievous hurt.—Reg. v. Joygopal, 4 W. R. 4, Cr.

IT is not murder if a person kills another without intending to take his life, and if the acts done were not such as conclusively indicated an intention to cause such injury as was likely to cause death.—Reg. v. Sheikh Solim, 5 W. R. 41, Cr.

A PERSON who beats another brutally and continuously, so that death results, is guilty of murder, or culpable homicide not amounting to murder, according as there may or may not have been grave provocation.—Reg. v. Tepra Fakeer, 5 W. R. 78, Cr.

IN A case of riot in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—Reg. v. Mana Singh and others, 7 W. R. 103, Cr.

THE prisoner was convicted of murder, and sentenced to death; but before confirming the sentence, as doubts were entertained of his sanity, the case was referred to the Sessions Judge with instructions for further enquiry.—Reg. v. Azoo Bebee, 2 W. R. 33, Cr.

IN A case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it does not palliate any offence, may be taken into account as throwing light on the question of intention.—Reg. v. Ram Sahay Bhar, W. R. 1864, 24, Cr.

A CONVICTION for murder was held to be wrong in a case where a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent, and knocked him over, thereby causing his death.—Reg. v. Kewal Dosad, W. R. Cr. 36.

TO GIVE an accused the benefit of excep. 1, s. 300, it ought to be shown distinctly not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.—10 W. R. 26, Cr.

WHEN the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.—Reg. v. Ramkuchea Singh, 4 W. R. 29, Cr.

AN unpremeditated assault, ending in an affray in which death is caused, committed in the heat of passion upon a sudden quarrel, comes within excep. 4 of s. 300. It is immaterial which party offered the provocation or committed the first assault.—Reg. v. Zalim Ray, 1 W. R. 33, Cr.

THOUGH the evidence was held to be sufficient to convict the accused of murder, yet as the evidence gave rise to doubts as to the precise part taken by the prisoner, it was thought safer to remit the capital sentence and pass one of transportation for life.—Reg. v. Lall Jhah, 1 W. R. 48, Cr.

WHERE the conviction rested upon circumstantial evidence or a violent presumption of guilt, the Court declined to confirm the capital sentence, but passed the minor sentence.—The Crown v. Adalut, Panj. Rec., No. 69 of 1866, Cr.; and The Crown v. Jai Ram, Panj. Rec., No. 28 of 1867, Cr.

THE prisoner kicked several times a man who was in his charge (who, having been severely beaten, had fallen senseless on the road), and thereby caused his death. The prisoner was found guilty of murder, and sentenced to transportation for life.—Reg. v. Nilmadhub Sircar, 3 W. R. 22, Cr.

THE provocation contemplated by s. 300 should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation.—I. L. R., 2 Mad. 122.

HOLD by the majority of the Court that when a person wilfully and deliberately killed a man who was endeavouring to escape after having been detected in the act of house breaking by night for the purpose of theft, the offence committed was murder.—Reg. v. Durwan Geer, 5 W. R. 73, Cr.

WHEN two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer. If one stood by while the crime was being committed, he would be an abettor.—Reg. v. Jan Mahomed and Kamoo Gazee, 1 W. R. 49, Cr.

IN A case of murder, where a man was struck on the head in a boat with a heavy paddle and knocked over board in a large river in the height of the rains, and had never been heard since, it was held impossible to suppose that the man was still alive.—Reg. v. Pooreesoolah Shikdar, 7 W. R. 14, Cr.

THE prisoners detected a weak, half-starved old woman stealing their rice, and so used their right of private defence that she died from the injuries they inflicted. The prisoners were held guilty by the majority of the Court of murder (*dissentiente*, Campbell, J.).—Reg. v. Gokool Bowree, 5 W. R. 33, Cr.

A SENTENCE of death was commuted into one of transportation for life in the case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of his child's illness, and that by killing the deceased the child's life might be saved.—Reg. v. Oaram Sungra, 6 W. R. 82, Cr.

WHEN a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—Reg. v. Baboolun Hijrah, 5 W. R. 7, Cr.

UNDER excep. 1, s. 300, the finding of a jury as to whether the offence of murder was committed under grave and sudden provocation sufficient to prevent the offence from amounting to murder, is a question of fact with which the High Court cannot interfere.—Reg. v. Shraie, 13 S. W. R., Cr. R. 33.

THE punishment of transportation for life inflicted instead of capital punishment in a case where there was no intention to cause death, but a reckless assault with a deadly weapon which inflicted an injury likely in the ordinary course of nature to cause death.—Reg. v. Khoaj Sheikh, 5 W. R. 20, Cr.

MURDER by poison. A man and a dog die a few hours after eating the same food, but no traces of poison are found in their bodies or in the possession of the accused. The mode of investigation by the police and by the Magistrates in such cases fully laid down.—*Chutto Chumar, Appellant*, 1 W. R. 3, Cr.

The prisoners found the deceased lying in the same bed with their sister, and ill-treated him, from the effects of which ill-treatment he died. *Held* that the provocation was sufficiently grave to justify a conviction of culpable homicide not amounting to murder.—*Reg. v. Kasseemoddeen and others*, 4 W. R. 38, Cr.

In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, a Sessions Judge has himself power under s. 4, Act XVII. of 1862, to pass sentence of death, instead of referring the matter for confirmation of the High Court.—*Reg. v. Busti Singh*, 14 S. W. R., Cr. R. 76.

SENTENCE of transportation for life in a case of murder instead of capital punishment, there being some reason to suppose that at the time of the murder both the deceased and the prisoners were drunk, and that the murdered man excited the prisoner's passion by calling him a thief.—*Reg. v. Ram Nath Gwala*, 3 W. R. 27, Cr.

HEAVY sentences reduced by the Chief Court to terms of imprisonment for two and three years, where death was caused on provocation in a sudden fight, no unfair advantage being taken of the deceased.—*The Crown v. Ameera, Panj. Rec.*, No. 12 of 1866, Cr., and *Kesur Singh v. The Crown, Panj. Rec.*, No. 13 of 1866, Cr.

The Sessions Judge having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death—in other words, guilty of murder—convicted and punished them for culpable homicide not amounting to murder. The case was remanded for a new trial.—*Reg. v. Beria Bazikur*, 3 W. R. 38, Cr.

The offences of murder and of culpable homicide not amounting to murder both suppose an intention to cause death, or knowledge that the injury inflicted was likely to cause death. In the absence of such intention or knowledge, the offence committed may be that of causing grievous hurt.—*Reg. v. Bhadoo Poranmuck*, 4 W. R. 23, Cr.

Two prisoners confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him. *Held* that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder.—*Reg. v. Gour Chand Poli and Dwarki Poli*, 1 W. R. 17, Cr.

In the absence of proof of premeditation, and considering that the accused did not use a lethal weapon (there was a violent altercation between husband and wife, and the former threw a stone at the latter and killed her), sentence of death commuted into sentence of transportation for life.—*The Crown v. Savaroo, Panj. Rec.*, No. 105 of 1866, Cr.

When a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder, and convicted of an offence under s. 314.—*Reg. v. Kalla Chand Gope and another*, 10 W. R. 59, Cr.

HELD by the majority that when two members of an unlawful assembly use spears and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—*Reg. v. Nazoor Fakir*, 4 W. R. 26, Cr.

THOUGH voluntary drunkenness cannot excuse the commission of an offence, yet where, as upon a charge of murder, the question is whether the act was premeditated or done only from sudden heat or impulse, the fact of the party being intoxicated was held to be a circumstance proper to be taken into consideration.—*The Crown v. Boodh Dass, Panj. Rec.*, No. 41 of 1866, Cr.

WHERE the accused were convicted of rioting and murdering a jemadar of chaukidars, who was assisting the police to apprehend a proclaimed offender, *held*

that the fact of the murder being committed without preconcertion or personal enmity did not warrant the Sessions Judge in abstaining from passing sentence of death.—*The Crown v. Ditta*, Panj. Rec., No. 31 of 1869, Cr.

A PERSON may be convicted of murder on his own confession. Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—*Reg. v. Hyder Jolaha*, 6 W. R. 83, Cr.

DECEASED, who had an enlarged spleen, was struck by the accused in the course of a quarrel, and died owing to his bodily infirmity. *Held* that, in the absence of any knowledge on the part of the accused of the diseased condition of the deceased, the offence was not culpable homicide, but using criminal force under s. 352, Penal Code.—*The Crown v. Jai Dyal*, Panj. Rec., No. 12 of 1876, Cr.

INTOXICATION is no excuse for a man throttling to death another and a weaker man, who was also intoxicated. The assessors having brought the case within excep. 4 of s. 300 without any good evidence or substantial grounds, the Sessions Judge was held to have correctly overruled their verdict, and found the prisoner guilty of murder.—*Reg. v. Akulpattee Gossain*, 5 W. R. 58, Cr.

THE Judge having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered.—*Reg. v. Sonmber Gwala*, 4 W. R. 32, Cr.

WHERE a prisoner convicted of murder against the opinion of the assessors was sentenced to transportation for life, the High Court reduced the sentence to 10 years' rigorous imprisonment, remarking on the severity of the Penal Code, and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country.—*Reg. v. Hossein Ally*, 7 W. R. 47, Cr.

THE three accused were convicted of murdering their cousin, who had supplanted one of the accused in an intrigue with Mussammat F. The accused caught the deceased and Mussammat F together. *Held* that, with due advertence to the state of society in the Rawalpindi district (where the case occurred), the sentences of death should be commuted.—*The Crown v. Fuzl*, Panj. Rec., No. 2 of 1867.

WHERE, from the circumstances, it appeared that a child which had been exposed by the prisoner died, but that death was not caused except very remotely by the exposure, the prisoner, though guilty under s. 317, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.—*Reg. v. Khodabux Fakeer*, 10 W. R. 52, Cr.

PRISONER was charged with murdering his wife. She had eloped from her husband, and, on his bringing her back, she was sulky and obstinate, refused to cook his food, or to eat and cohabit with him. Provoked by this, he struck her a violent blow with an axe, which killed her: *Held* that the offence was culpable homicide. Fourteen years' transportation.—*Fuzl Shah v. The Crown*, Panj. Rec., No. 87 of 1866, Cr.

WHERE the Sessions Judge convicted the accused of culpable homicide not amounting to murder, and sentenced him to seven years' rigorous imprisonment, the Chief Court, on the Revision Side, not finding any of the exceptions under s. 300 established, altered the conviction to one of murder, and sentenced the accused to transportation for life.—*The Crown v. Gholam Mahomed*, Panj. Rec., No. 11 of 1871, Cr.

PRISONER caused to be given to deceased some substance which he alleged to have been given with intent to bring on madness. *Held* that the act of the prisoner was known to him to be likely to cause death, and therefore he was properly convicted of murder; but as death was not the immediate object of his intention, the sentence of death was commuted.—*The Crown v. Khema*, Panj. Rec., No. 8 of 1869, Cr.

EXCEP. 5 to the above section refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death, or that death will be the likely result; but it does not refer to the running of a risk of death from which something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated.—*I. L. R.*, 5 Cal. 31.

WHEN the law gives the alternative punishments of death, transportation for life, or rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then under s. 59 change it to transportation for that period.—*Reg. v. Rughoo*, *W. R. Cr.* 30.

ACCUSED confessed to a charge of murder. His confession, made before the Magistrate and Sessions Court, was, in fact, corroborated by other evidence, but conflicted with the medical evidence; and the Sessions Judge considered it not improbable that accused had been influenced by the police to confess. *Held*, by the Chief Court, that it would be safer not to confirm the sentence.—*The Crown v. Meer Khan*, *Panj. Rec.*, No. 3 of 1867, *Cr.*

WHERE a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under excep. 1 of s. 300, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her.—*Reg. v. Nokul Nushyo*, 7 *W. R.* 27, *Cr.*

HELD by the majority that when four men beat another at intervals so severely as to cause death, they must be presumed to have known that by such acts they were likely to cause death, and that when such acts were done without any grave or sudden provocation, or sudden fight or quarrel, the offence was murder, and was not reduced to culpable homicide not amounting to murder by the absence of intention to cause death.—*Reg. v. Pooshoo and Hurrial*, 4 *W. R.* 33, *Cr.*

WHERE death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—*Samshere Khan v. The Empress*, *I. L. R.*, 6 Cal. 154.

WHERE a person snatches up a log of heavy wood, and strikes another with it on a vital part, with so much force and vindictiveness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death; but if done without premeditation, in the heat of passion, on a sudden quarrel, the offence committed is culpable homicide not amounting to murder.—*Reg. v. Rajoo Ghose and others*, 7 *W. R.* 100, *Cr.*

WHEN a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was likely to cause death, the conviction should be of murder, and not of culpable homicide not amounting to murder. The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising powers.—*Reg. v. Sobeeel Mahee*, 5 *W. R.* 32, *Cr.*

UNDER the Penal Code no constructive, but an actual, intention to cause death is required to constitute murder. Thus, when a boy of fifteen years old, in the heat of discovering the deceased in the act of adultery with the wife of a near relative, and without the use of any weapon, joined that relative in committing an assault upon the deceased which caused his death, the offence committed was held to have been culpable homicide not amounting to murder.—*Reg. v. Goreeboollah*, 5 *W. R.* 42, *Cr.*

ACCUSED, a police-constable, in the course of an inquiry into a theft case, violently beat deceased, who died about nine days afterwards from the effects of the beating: *Held* that a conviction for culpable homicide could not be sustained, as

there was nothing to show that the beating was likely, to the knowledge of the prisoner, to cause death. Conviction altered to one under s. 330, Penal Code. Sentence, seven years' imprisonment and Rs. 200 fine — *Meeah Mahomed v. The Crown*, Panj. Rec., No. 86 of 1866, Cr.

WHERE there was no direct evidence of a murder having been committed, but the accused confessed that he had burnt the body of the deceased after death, though he denied that he had murdered her, or that she had been murdered, the Court presumed from all the acts and statements of the accused, and the presence of motive and other circumstances, that deceased was violently put to death, and by the hands of the accused, and confirmed the sentence of death accordingly.—*The Crown v. Bunna*, Panj. Rec., No. 13 of 1869, Cr.

WHEN a Sessions Judge finds the accused guilty of murder, the sentence of death must be passed, unless there is some extenuating circumstances, some excuse which, though the law does not regard it as sufficient to reduce the killing to the offence of culpable homicide, is ground for looking leniently on the act. The fact that the accused was not arrested when actually committing the crime, or in the act of escaping from the spot, is no reason for not passing sentence of death.—*Kamal v. The Crown*, Panj. Rec., No. 13 of 1873, Cr.

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence. *Held* that the snake-charmer was guilty of culpable homicide not amounting to murder under s. 304, and not merely of causing death by negligence, an offence punishable under s. 304A.—*L. R.*, 5 Cal. 351.

To bring a case under clause 4, s. 300, it must be proved that the accused, in committing the act charged, knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. *Held* that a case in which the accused person pursued after a thief, and killed him after house-trespass had ceased, did not fall within the 2nd exception to s. 300, the right of private defence of property continuing under clause 5, s. 103, only so long as the house-trespass continues.—*Reg. v. Balakee Jolahed*, 10 W. R. 9, Cr.

THE prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. *Held* under the circumstances that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder.—*Reg. v. Panchanun Pantee*, 6 W. R. 97, Cr.

A JUDGE should clearly acquit a prisoner of murder when so charged, and not merely find him guilty of culpable homicide not amounting to murder. When a Judge acquits a prisoner of murder, the High Court cannot, either as a Court of Appeal or as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in cl. 4, s. 300; nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error or enhance the sentence.—*Reg. v. Toyab Sheikh*, 5 W. R. 2, Cr.

CERTAIN snake-charmers, professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite three of these persons died. *Held* that the offence was murder under clauses 2 and 3 of s. 300 of the Penal Code, unless it could be brought within the 5th exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder.—*The Queen v. Punai Fattama*, 3 B. L. R. 25, Cr.; S. C., 12 W. R. 7, Cr.

GUILTY intention or knowledge is a constituent part of the offence of culpable homicide, and although every unlawful act is presumed to be wrongly intended until

the contrary is shown, yet it is for the Court to consider whether the whole case does not disclose circumstances (whether they come from the accused or the prosecutor) which negative the existence of such intention. It is only in the exceptional cases mentioned in s. 300—of which there should be evidence—that culpable homicide can be taken out of the category of murder, and reduced to an offence of lower degree.—*Jehangeer Khan v. The Crown*, Panj. Rec., No. 22 of 1868, Cr.

UPON an inoffensive remark made by deceased, Fazl Khan picked a quarrel with him, and after some words had passed between the two, Fazl Khan held the deceased's arms down by his side, while Muhammad Khan inflicted a stab which caused death. *Held* that the prisoner was improperly convicted of culpable homicide not amounting to murder, and should have been convicted of murder. A Court should find clearly the exception under s. 300, which, in the Court's opinion, exists as a reason for reducing the offence to culpable homicide not amounting to murder.—*Mahomed Khan v. The Crown*, Panj. Rec., No. 12 of 1869, Cr.

THE wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and, watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held* that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder.—*The Queen v. Ramtahal Kahar*, 2 B. L. R., App. Cr., 33.

THE prisoner was found guilty, and sentenced, under Reg. IV. of 1797, to transportation for life, for a murder committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Reg. IV. of 1797 was repealed by Act XVII. of 1862, and that Act was wholly repealed by Acts VIII. of 1868 and X. of 1872. *Held* that the conviction was illegal; Act I. of 1868, s. 6, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable.—*I. L. R.*, 2 Cal. 225 (F. B.). But see *I. L. R.*, 1 All. 599.

HELD in a case of murder that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplices, to point out any independent evidence proving facts showing that the prisoners were or must have been present at or cognizant of the murder.—*Reg. v. Karoo Runnee and Nundoo Khettree*, 6 W. R. 44, Cr.

TWO PARTIES met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple as the latter was rising or had just risen from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of clauses 2 and 3, s. 300.—*Reg. v. Dasser Bhooyan*, 8 W. R. 71, Cr.

ACCUSED was out in the jungles with his gun. An altercation arose between him and deceased, the former interfering to prevent the latter from committing real or supposed cattle-trespass. Deceased thereupon with a large club attacked accused, who fired without any particular aim, but lowering the muzzle of the gun, so as not to hit a vital part; and death ultimately resulted from the wound inflicted. *Held* that accused's act was not a legal exercise of the right of private defence, as it was not necessary for his defence that he should fire: he had only to stand back and let deceased alone, and he was safe. *Held*, accordingly, that the accused was rightly convicted of culpable homicide not amounting to murder.—*The Crown v. Kurteen Buksh*, Panj. Rec., No. 13 of 1868, Cr.

ACCORDING to the prisoner's statement (the only direct evidence in the case). Mussammat Wahabji solicited him to continue a criminal intercourse which had existed between them; and on his declining, she kicked him, on which he struck her a blow over the region of the heart, throttled her till she ceased breathing, and then flung the body into a well. *Held* that there was not such grave and sudden provocation as reduced the offence to culpable homicide, and that the case did not fall under the 4th exception of s. 300, Penal Code (sudden fight, &c.), because the prisoner acted in a cruel and unusual manner, but that the provocation received by the accused was a sufficient reason for not passing sentence of death. Sentence commuted accordingly.—*The Crown v. Sumundur*, Panj. Rec., No. 4 of 1872, Cr.

PRISONER found deceased in the act of house-breaking by night in his house, and killed him with a kodali, which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that not whilst deprived of the power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed. The Judge, however, in a letter to Government, suggested the mitigation of the punishment, which was accordingly reduced to imprisonment for six months.—*Regina v. Durwan Geer*, 1 Ind. Jur., N. S., 253.

IN order to constitute the offence of attempt to murder under s. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger: *Held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down in *Reg. v. Collins* and the provisions of the Indian Penal Code explained.—*Reg. v. Francis Cassidy*, 4 Bom. Rep. 17, Cr.

THE dying statement of a deceased person must be taken in the presence of the accused. If not so taken, the writing cannot be admitted to prove the statement made. The statement may be proved in the ordinary way by a person who heard it, and the writing may be used for the purpose of refreshing the witness's memory. A prisoner was charged with "causing the death of A by inflicting a wound on him with a chheni with the intention of causing bodily injury, such as was sufficient, in the course of nature, to cause death, or which he knew to be likely to cause death." *Held* that the charge was defective and inexact as regarded the second and third clauses of the definition of murder in s. 300 of the Penal Code. With reference to the second clause, it should have run, "likely to cause the death of A, the person to whom the harm was caused." With reference to the third clause, it should have said "ordinary course of nature."—*The Empress v. Samiruddin*, 1 L. R., 8 Cal. 211.

H HAD for some time suspected his wife of a criminal intrigue with R. K gave H information that R and H's wife had arranged to meet at a certain place, to which H and K went together, the former armed with a stick, and where they caught H's wife and R in the act of committing adultery. H pursued R for about fifty paces, and then struck and killed him, and afterwards turning upon his wife (who had been detained by K) and striking her; she escaped, severely beaten, but H, according to his own statement, believed he had mortally struck her. The Sessions Judge convicted H of murder and K of abetment of murder, and sentenced each to transportation for life. *Held* by the Chief Court that K was not guilty under the circumstances of any offence, and that H was guilty of culpable homicide not amounting to murder. K ordered to be released, and the sentence upon H reduced to three years' rigorous imprisonment.—*Hussun v. The Crown*, Panj. Rec., No. 30 of 1872, Cr.

A, of Allyghur, obtained a decree against B and C, of Kasheepoor, for their share in certain property. A sent four men to take possession and plough the land, which

was opposed by six men of Kasheepoor. A fight ensued, resulting in the death of one of the Kasheepoor men, caused by a blow inflicted by one of the Allyghur men. The Deputy Commissioner convicted the four Allyghur and five surviving Kasheepoor men of being members of an unlawful assembly, and of culpable homicide. *Held*, on appeal, that there was no common object on the part of the two factions, and therefore they did not jointly form an unlawful assembly under s. 141, that the Kasheepoor men merely exercised the right of private defence under s. 97, and that the Allyghur men, being less than five in number, did not compose an unlawful assembly, but that the Allyghur man who struck the fatal blow was guilty of culpable homicide, and the rest of his party of abetting that offence.—*Kullan v. The Crown*, Panj. Rec., No. 13 of 1870, Cr.

WHERE the accused was, on a cry of "thief" being raised against him, pursued by certain private persons, in whose view he had not committed any non-bailable or cognizable offence, whereupon he turned and shot dead one of his pursuers who was on the point of seizing him: *Held* that the offence was one of culpable homicide not amounting to murder, as the accused, although he was entitled to resist the attempt of his pursuers to capture him in the exercise of his right of private defence, had exceeded the power given him by law when he caused the death of the person against whom he was exercising that right, but without an intention of doing more harm than was necessary for the purposes of defence. *Held*, further, that the accused must be taken to have acted with the intention of causing such bodily injury as was likely to cause death, though he may have intended specifically to cause death, and was therefore guilty of culpable homicide in the greater degree.—*The Empress v. Sher Baz*, Panj. Rec., No. 1 of 1880, Cr.

J, with three others, all of them unarmed, attempted late at night to steal wood from H S's field. M S, who was in charge of the field, raised an alarm, and H S with K S and L S came up and seized J and S D, another of the thieves. H S and his party, who were armed with sticks, struck J and S D, and took them into the village, J being senseless from the blows, and S D uninjured. J died next morning from one of the blows received, which had broken one of his ribs, and which was the only serious blow inflicted. The Deputy Commissioner convicted H S, M S, K S, and L S of culpable homicide, holding that though it was not shown which of the four inflicted the fatal blow, they were all four guilty, as they were acting together for a common purpose. *Held* by the Chief Court that, with reference to the common purpose of the accused to arrest the deceased, who with others was attempting to commit theft, and other circumstances in the case, and as it had not been found that the accused had used excessive violence, the conviction must be set aside.—*Hira Singh v. The Crown*, Panj. Rec., No. 26 of 1872, Cr.

BY his own confession and the other evidence, prisoner killed with a hatchet Mussamat Almo, his sister, and Choochur, having found them sleeping together at Choochur's cattle-enclosure. The accused, on information received, had gone in search of her and Choochur, expecting to find them together. He had gone armed with a hatchet, but he stated in his defence that he lost control over himself on finding them together, and so killed them both. *Held*, with regard to the punishment, that the injury to the feelings of the accused, though hardly to be deemed sudden or unexpected, considering that he had himself gone to the spot expecting to find Almo, as in fact he found her, was great. Nor was the absence of sufficient sudden provocation inconsistent with the absence of premeditation, for murder may result from the reckless anger of the moment. Moreover, in this case the existence of premeditation was not necessarily to be inferred from the prisoner's conduct. Once before there had been violence on such an occasion, and the prisoner's taking the hatchet was, open to the doubt that he might have thought proper to do so without designing murder at the time of setting out. Sentence of death commuted.—*The Crown v. Mahomed*, Panj. Rec., No. 107 of 1866, Cr.

WHERE an act which causes death is done with an intention to kill, the offence is always murder. Where the act causing death is done without any intention to cause death or bodily injury, whether the offence is culpable homicide or murder depends on the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. When the act causing death is done with the intention of causing such bodily injury as the offender

knows to be likely to cause the death of the person to whom the harm is caused, the offence is murder, if the offender knows that the particular person injured is likely, from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. When the act causing death is done with the intention of causing such bodily injury as is *likely* to cause death, it is culpable homicide; if done with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, it is murder. When the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with his clenched fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards: *Held*, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence was culpable homicide, and not murder.—Reg. v. Govinda, I. L. R., 1 Bom. 342.

A HEAD-CONSTABLE, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more on the ground that they were poor and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp (men, women, and children) turned out (some four or five of the men being armed with sticks and stones), and advanced in a threatening manner towards the place such gipsy was being bound and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested, and withdrawn himself and his subordinates, or had he effected his escape. *Held* that such head-constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—Empress of India v. Abdul Hakim, I. L. R., 3 All. 253.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder.	Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.
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A CHARGE under s. 302 need not set out all the facts necessary to constitute the offence of murder, and negative all the exceptions contained in s. 300.—5 W. R., R. C., 1; *ib.*, 2, Cr.

THE mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder.—Empress of India v. Bhagirath, I. L. R., 3 All. 383.

IF THE act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity.—Reg. v. Ram Coomar Chung, 1 Ind. Jur., O. S., 108.

IF A person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396. But he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—Reg. v. Rughoo, W. R. 1864, 30, Cr.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

Ditto.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CAUSING death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death, or such bodily injury as was likely to cause death, is punishable under s. 304 as culpable homicide not amounting to murder.—Reg. v. Khedun Misser, 7 W. R. 54, Cr.

CULPABLE homicide not amounting to murder is when a man kills another on being deprived of self control by reason of grave and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder.—Reg. v. Yasin Sheikh, 4 B. L. R., A. Cr. 6; 12 S. W. R., Cr. R., 68.

WHERE a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment: *Held* that she could not be convicted and punished under s. 304 and also under s. 317, but under s. 304 only.—I. L. R., 2 All. 349.

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, *held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—23 W. R. 61, Cr.

WHERE a Sessions Judge, in charging a jury in a case of culpable homicide not amounting to murder, omitted to draw their attention to the two classes of culpable homicide mentioned in s. 304, the High Court considered that the accused were found guilty of the lighter description, and sentenced the accused to the punishment for such lighter description.—Reg. v. Kalichurn Dass and others, Appellants, 15 W. R. 17, Cr.; 6 B. L. R., App., 86.

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal the High Court held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—Reg. v. Guru Churn Chung, 6 B. L. R., App., 9; 14 W. R. 69, Cr.

THE wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased.

He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held* that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder.—*The Queen v. Ramtahal Kahar*, 2 B. L. R., App. Cr., 33.

WHERE an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased: *Held* that it was not sufficient, in order to find the accused guilty of a rash act only under s. 304A, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and of the risk to life involved in striking a person afflicted with that disease.—I. L. R., 4 Cal. 815.

THE above section does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—I. L. R., 4 Cal. 764.

304A. Whoever causes the death of any person by doing any rash

Causing death by negligence. or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Ct. of Ses.,
Presy. Mag.
or Mag. of 1
class.
Cognizable.
Warrant.
Bailable.
Not comp.

AN Assistant Commissioner in Chota Nagpore was held to have no jurisdiction to try a case of culpable homicide not amounting to murder under s. 304A, Penal Code (s. 12, Act XXVII. of 1870).—18 W. R. 23, Cr.

WHERE the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304A to one under s. 323.—*Empress v. Ganda Singh*, Panj. Rec., No. 11 of 1880, Cr.

THE accused struck his servant with a stick on his side for refusing to obey certain orders given him. The servant was at the time suffering from enlarged spleen, and its rupture caused his death. The Magistrate convicted accused under s. 304A of the Penal Code, and, out of the fine imposed, awarded compensation to the relatives of the deceased, under Act XIII. of 1855. *Held* that the award of compensation was illegal.—*The Crown v. Gopal Das*, Panj. Rec., No. 7 of 1877, Cr.

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence. *Held* that the snake-charmer was guilty of culpable homicide not amounting to murder under s. 304, and not merely of causing death by negligence, an offence punishable under s. 304A.—I. L. R., 5 Cal. 351.

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death or causing such bodily injury as was likely to cause death, or without the

* See s. 12, Act XXVII., 1870.

knowledge that he was likely by his act to cause death, and caused grievous hurt to N. from which N died : *Held* that B ought not to be convicted under s. 304A of the Penal Code (Act XXVII. of 1870, s. 12) of causing death by negligence, but under s. 320 of that Code of voluntarily causing grievous hurt.—I. L. R., 2 All. 766.

IN THE case of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall to the road below, a distance of 2½ cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after : *Held* that on these facts the accused was not guilty of the offence of causing death by a rash or negligent act described in s. 304A, Penal Code (Act XXVII. of 1870, s. 12), nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, *a fortiori*, no designed causing of it.—I. L. R., 1 Mad. 224.

Ct of Ses.
Cognizable.
Warrant.
Not bail able.
Not comp.

305. If any person under eighteen years of age, any insane person, Abetment of suicide of any delirious person, any idiot, or any person child or insane person. in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

THE prisoners, having abetted the suicide, were rightly convicted by the Judge of that offence. The sentence, however, was mitigated under the circumstances.—Govt. v. Gopaul Singh, 1 Agra Rep., Cr., 21.

Ditto.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

307. Whoever does any act with such intention or knowledge, and under such circumstances, that if he, by that act, caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.*

Attempts by life-convicts.

Illustrations.

(a.) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b.) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c.) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section ; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.

(d.) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping ; A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

* See s. 11, Act XXVII., 1870.

In order to constitute the offence of attempt to murder under s. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger: *Held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down in *Reg. v. Collins* and the provisions of the Indian Penal Code explained.—*Reg. v. Francis Cassidy*, 4 Bom. Rep., Cr., 17.

308. Whoever does any act with such intention or knowledge, and Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.
Attempt to commit culpable homicide. under such circumstances, that if he, by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309. Whoever attempts to commit suicide, and does any act Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.
Attempt to commit suicide. towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both."*

310. Whoever, at any time after the passing of this Act, shall Thug.
have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311. Whoever is a thug shall be punished Punishment.
with transportation for life, and shall also be liable to fine. Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS.

312. Whoever voluntarily causes a woman with child to miscarry Ct. of Ses. Uncoog. Warrant. Bailable. Not comp.
Causing miscarriage. shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

* The words quoted have been substituted by Act VIII. of 1882, s. 7, for the words, "and shall also be liable to fine."

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

In a case in which the child was full grown, the Court declined to convict the accused of causing miscarriage under s. 312, but convicted them of an attempt to cause miscarriage under ss. 312 and 511.—19 W. R. 32, Cr.

THE offence defined in s. 312 can only be committed when a woman is, in fact, pregnant. To constitute the act of abetment, however, it is not necessary that the act abetted should be committed. A, a woman, may fail involuntarily in causing abortion, not being pregnant; but B, who instigated her, believing her to be pregnant, may be guilty of abetting an offence.—Reg. v. Kabul Pattur and Jhumpa, Appellants, 15 W. R. 4, Cr.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above-mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Ditto.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Ditto.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Whoever, being the father or mother of a child under the age

Exposure and abandonment of child under twelve years, by parent, or person having care of it.

of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses.
Cognizable.
Warrant
Bailable.
Not comp.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

S. 317 contemplates cases in which the death of a child is caused from cold or some other result of exposure.—10 W. R. 52, Cr. See also 16 W. R. 12, Cr., *infra*.

S. 317 was intended to prevent the abandonment or desertion by a parent of his or her children of tender years in such a manner that the children, not being able to take care of themselves, would run the risk of dying or being injured.—*In re Felani Hariani*, 16 W. R. 12, Cr.

WHERE a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment: *Held* that she could not be convicted and punished under s. 304 and also under s. 317, but under s. 304 only.—*I. L. R.*, 2 All. 349.

WHERE the prisoner caused the death of her infant child by purposely abstaining from giving the deceased any nourishment, but did not part with the custody of, or abandon, the child: *Held* that the prisoner was wrongly convicted of an offence under s. 317, and that the Sessions Judge, in convicting her under s. 304, should have specified the exception under s. 300 which applied to the case.—*Mussammat Ram Dai v. The Crown*, Panj. Rec., No. 18 of 1870, Cr.

THE prisoner left her child, illegitimate and newly-born, near a road in a thorn enclosure about 200 yards from the village. The child was found by a traveller, lived for about thirty hours, and then died. *Held* that a conviction for murder could not be supported, as it might have been had the child been left on a barren heath or in an unfrequented place, but that the mother was guilty of abandonment under s. 317.—*Mussammat Nanki v. The Crown*, Panj. Rec., No. 23 of 1866, Cr.

K was delivered of a child at the house of S, her mother, K's husband being then away in Kashmir. K's mother took the child to the house of K's husband's sister, and placed the child naked at her feet or in her lap, saying, "This is your brother's child." S went away, and the child died some hours afterwards. *Held* that S had not committed an offence under s. 317, nor had K abetted any such offence.—*The Crown v. Mussammat Khairo*, Panj. Rec., No. 33 of 1872, Cr.

ACCUSED, a married woman, eloped, leaving her child, 1½ months' old, being at the time supported by her milk, in the house of her husband, who was in charge of it jointly with her, who was under the same legal obligation to protect it, and who, the Magistrate found, was certain, as the mother knew, to take care of it. *Held* by the Chief Court that there was not a "leaving with the intention of wholly abandoning" the child within the meaning of s. 317, and that the conviction was therefore unsustainable.—*The Crown v. Mussammat Bhuran*, Panj. Rec., No. 5 of 1878, Cr.

ACCUSED, a married woman, quarrelled with her husband, and left his house for her parent's house in another village, leaving her child, aged six months, in her husband's house. Her husband was not in the house at the time, but on his return shortly after he found the door shut, his wife absent, and the child lying on the floor crying. He informed the lambardár, who arranged for supplying milk for the child, and himself went to the thana to report the matter. *Held* that, on the facts found, accused had not left her child with the intention of wholly abandoning it within the meaning of s. 317, and that her conviction under that section was therefore not maintainable. *The Crown v. Mussammat Bhuran*, Panj. Rec., No. 5 of 1878, Cr., referred to and approved.—*Empress v. Mussammat Bhagan*, Panj. Rec., No. 4 of 1879, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Bailable.
Not comp.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

UPON a prosecution under s. 318, a person cannot be convicted of concealing the birth of a child in the case of a mere fœtus four months old.—4 Mad. Rep., Rul. lxiii.

OF HURT.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

THE pain caused by a blow across the chest with an umbrella was held not to be of such a trivial character as to come within s. 95, but to come under the definition of hurt in s. 319.—24 W. R. 67, Cr.

WHERE a wife died from a chance kick in the spleen inflicted by her husband, not knowing that the spleen was diseased, and showing by the blow that he had no intention or knowledge that the act was likely to cause hurt endangering human life: *Held* that the husband was guilty of an offence under ss. 319 and 321, and not an offence under ss. 320 and 322.—Reg. v. Bysagoo Noshyo, 8 W. R. 29, Cr.

320. The following kinds of hurt only are designated as "grievous:"

Grievous hurt.

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly. Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—Gholam Russool v. The Crown, Panj. Rec., No. 32 of 1866, Cr.

THERE must be evidence to prove that hurt, as described in s. 320 as grievous hurt, has been caused, before a conviction can be had under s. 320.—Reg. v. Kaminee Dossee, 12 W. R. 25, Cr.

WHERE a wife died from a chance kick in the spleen inflicted by her husband, not knowing that the spleen was diseased, and showing by the blow that he had no intention or knowledge that the act was likely to cause hurt endangering human life: *Held* that the husband was guilty of an offence under ss. 319 and 321, and not an offence under ss. 320 and 322.—Reg. v. Bysagoo Noshyo, 8 W. R. 29, Cr.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing hurt.

WHERE a wife died from a chance kick in the spleen inflicted by her husband, not knowing that the spleen was diseased, and showing by the blow that he had no intention or knowledge that the act was likely to cause hurt endangering human life : *Held* that the husband was guilty of an offence under ss. 319 and 321, and not an offence under ss. 320 and 322.—*Reg. v. Bysagoo Noshiyo*, 8 W. R. 29, Cr.

322. Whoever voluntarily causes hurt, if the hurt which he intends

Voluntarily causing grievous hurt. to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—*Queen v. Goluck Chung*, 5 W. R. 75, Cr.

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—*Queen v. Doorgessur Surmah*, 7 W. R. 97, Cr.

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335 : *Held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—23 W. R. 61, Cr.

WHERE a wife died from a chance kick in the spleen inflicted by her husband, not knowing that the spleen was diseased, and showing by the blow that he had no intention or knowledge that the act was likely to cause hurt endangering human life : *Held* that the husband was guilty of an offence under ss. 319 and 321, and not an offence under ss. 320 and 322.—*Reg. v. Bysagoo Noshiyo*, 8 W. R. 29, Cr.

323. Whoever, except in the case provided for by section 334, Any Mag.

Punishment for voluntarily causing hurt. voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. Uncog. Summons. Bailable. Comp.

THE offences of rioting and causing hurt are distinct offences, and are separately punishable under ss. 147 and 323.—I. L. R., 2 All. 139, Cr.

A DISABILITY for twenty days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—*Reg. v. Bishnooram Sarma*, 1 W. R. 9, Cr.

WHERE a person was tried and acquitted on a charge of using criminal force, he cannot afterwards be charged with committing hurt in respect of the same transaction.—*Kaptan v. Smith*, 16 W. R. 3, Cr.

; the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304A to one under s. 323.—*Empress v. Ganda Singh*, Panj. Rec., No. 11 of 1880, Cr.

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335 : *Held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—23 W. R. 61, Cr.

WHERE a person hurt another who was suffering from spleen-disease intentionally, but without the intention of causing death or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person : *Held* that he was properly convicted, under s. 323, of voluntarily causing hurt.—*I. L. R.*, 2 All. 522.

*, according to the prisoner's own confession (which was the only direct evidence against her), she, with a view of chastising a disobedient and impertinent child, but without any intention of killing her, in a fit of passion struck her and knocked her down senseless, and afterwards hung her up to the beam so as to make it appear that the girl had committed suicide : *Held* that the conviction should be under s. 323, of voluntarily causing hurt.—18 W. R. 29, Cr.

THE prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen : *Held* under the circumstances that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder.—*Reg. v. Panchanun Pantee*, 6 W. R. 97, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Comp. when
permission
is given
by Court
before which
prosecution
pending.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324.—*Reg. v. Bhola Chube*, 1 Bom. Rep. 17.

RIOTING armed with deadly weapons and stabbing are distinct offences, and punishable separately under ss. 148, 149, and 324.—7 W. R. 60, Cr. See also 5 W. R. 19, Cr. But see 10 W. R. 63, Cr.

A PERSON who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324.—*Reg. v. Lukhun Doss*, 2 W. R. 52, Cr.

UNDER s. 454 of the Criminal Procedure Code (corresponding with s. 235 of the Code of 1882), the collective punishment awarded under ss. 147, 148, and 324, must not exceed that which may be awarded for the graver offence.—In the matter of the petition of Jubbār Kazi and Golab Khan. *Empress v. Jubbār Kazi and Golab Khan*, *I. L. R.*, 6 Cal. 718.

325. Whoever, except in the case provided by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

A DISABILITY for twenty days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—Reg. v. Bishnooram Sarma, 1 W. R. 9, Cr.

WHEN the result of a joint attack by several persons on one man is the fracture of his arm, the offence committed is grievous hurt, and not assault.—Reg. v. Ramtohl Singh, 5 W. R. 12, Cr.

WHERE, in the commission of a robbery, death was caused by a blow with a *lati* on a tender part of the head, the conviction was altered from one under s. 394 to one under s. 325.—6 W. R. 16, Cr.

WHEN bone-fractures are caused in addition to other injuries, the offence committed is grievous hurt, triable by a Court of Session, and not hurt cognizable by a Magistrate.—Reg. v. Ramtohl Sing, 5 W. R. 65, Cr.

WHEN there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide, but grievous hurt.—Reg. v. Megha Meeah, 2 W. R. 34, Cr.

THE offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine.—Reg. v. Sharoda Peshagur, 2 W. R. 32, Cr.; Reg. v. Menazoodin, 2 W. R. 33, Cr.

THE amount of punishment for cutting off a wife's nose for intriguing with another man depends on whether it was at the instant the husband found himself dishonoured, or long afterwards.—Reg. v. Sutanut Russooa, 4 W. R. 17, Cr.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—Queen v. Goluck Chung, 5 W. R. 75, Cr.

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—Queen v. Doorgessur Surmah, 7 W. R. 97, Cr.

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335: Held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—23 W. R. 61, Cr.

THE accused were charged under s. 149, coupled with s. 325, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325: Held that such verdict was, under Act X of 1872, s. 457 (corresponding with Act X. of 1892, s. 238), legally sustainable, although that offence did not form the subject of a separate charge. S. 457 (s. 238) enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence.—I. L. R., 5 Cal. 871, Cr.

326. Whoever, except in the case provided by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Summons.
Not bailable.
Not comp.

into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

THE offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, and not under s. 326.—4 W. R. 4, Cr.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

328. Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

THE offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, and not under s. 326.—4 W. R. 4, Cr.

Held that a person who placed in his toddy-pots juice of the milk-bush, knowing that, if taken by a human being, it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under s. 328, of "causing to be taken an unwholesome thing with intent to injure," and that s. 81, which says that, "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.—Reg. v. Dhania Daji, 5 Bom. 59.

Ditto.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(a.) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b.) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c.) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d.) A, a zamindár, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

To bring a case under s. 330, it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offence or misconduct punishable under the Indian Penal Code. That section therefore does not apply to a case where the confession extorted had reference to a charge of witchcraft.—Reg. v. Baboo Moondce, 13 W. R. 23, Cr.

A CHARGE may be made under s. 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.—Reg. v. Nim Chand Mookerjee, 20 W. R. 41, Cr.

331. Whoever voluntarily causes grievous hurt for the purpose of

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of

constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

332. Whoever voluntarily causes hurt to any person being a

Voluntarily causing hurt to deter public servant from his duty.

public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant

from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

333. Whoever voluntarily causes grievous hurt to any person

Voluntarily causing grievous hurt to deter public servant from his duty.

being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public

servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Any Mag.
Unco.
Summons.
Bailable.
Comp.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324.—Reg. v. Bhola Chube, 1 Bom. Rep. 17.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Comp. when
permission is
given by
Court before
which prosecu-
tion is pend-
ing.

335. Whoever "voluntarily"* causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

CAUSING grievous hurt on grave and sudden provocation, without any intention of causing grievous hurt, or knowledge that such hurt was likely to be caused, is punishable under s. 335.—Reg. v. Umbica Tantinec, 4 W. R. 24, Cr.

A MAN who, by a single blow with a deadly weapon, killed another man who, at dead of night, was entering his room for the purpose of having criminal intercourse with his wife, was held guilty of causing grievous hurt on a grave and sudden provocation.—Reg. v. Chullundee Poramanick, 3 W. R. 55, Cr.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

BOATMEN who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under s. 282, and not under s. 336.—Reg. v. Khoda Jagata, 1 Bom. H. C. Rep. 137.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Comp. when
permission is
given by
Court before
which prosecu-
tion is pend-
ing.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

THE above section does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was

* This word has been inserted by Act VIII. of 1862, s. 8.

likely by such act to cause the actual result : and if such knowledge can be imputed, the result is not to be attributed to mere rashness ; if it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—I. L. R., 4 Cal. 764, Cr.

338. Whoever causes grievous hurt to any person by doing any

Causing grievous hurt by act endangering life or personal safety of others.

act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp. when permission is given by Court before which prosecution is pending

DEFENDANT was convicted, under s. 338, of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town, between the hours of 7 and 8 P.M. ; that the carriage was being driven at an ordinary pace, and in the middle of the road ; that the night was dark, and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers ; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. *Held*, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.—6 Mad. Rep., Rul. xxxii.

THE above section does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result : and if such knowledge can be imputed, the result is not to be attributed to mere rashness ; if it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—I. L. R., 4 Cal. 764, Cr.

OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

339. Whoever voluntarily obstructs any person so as to prevent

that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

WHERE a police-officer refused to let a person go home until he had given bail, he was *held* guilty of wrongful restraint under s. 339.—10 W. R. 20, Cr.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said “wrongfully to confine” that person.

Illustrations.

(a.) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b.) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

• Any Mag.
Cognizable.
Summons.
Bailable.
Comp.

341.* Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

† Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Comp.

342.† Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

THE High Court declined to interfere where a Deputy Magistrate directed the discharge of an accused under s. 342, because the complainant and his witnesses were not present.—13 W. R. 35, Cr.

‡ Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

343.‡ Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

§ Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

344.§ Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

|| Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Uncoo.

345.|| Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

§§ Ct. of Ses.,
Not comp.

346.¶ Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

¶ Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

A CHARGE of assault and theft should not be dismissed for default of complainant's attendance.—1 W. R. 25, Cr. See 5 W. R. 51, Cr.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

ACCORDING to s. 348, wrongful confinement cannot be punished with fine only, but with imprisonment also.—5 W. R. 5, Cr.

OF CRIMINAL FORCE AND ASSAULT.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described :—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(a.) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(b.) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(c.) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d.) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(e.) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(f.) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g.) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h.) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

351. Whoever makes any gesture or any preparation, intending

Assault.

or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a.) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b.) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c.) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Any Mag.
Unocr.
Summons.
Bailable.
Comp.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence,—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant,—or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

THE plea of *autrefois acquit* was held admissible in the case of a person who was charged with causing hurt after having been acquitted on a charge of using criminal force under s. 352.—16 W. R. 3, Cr.

IN a case of assault, a sentence inflicting a fine of Rs. 50, and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss. 65 and 352.—*Jehun Buksh*, 16 S. W. R. 42, Cr.

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick, and uses it, B (the master of A), who gives a general order to beat, is guilty of abetting the assault made by A.—*Queen v. Rosoo Koollah*, 12 W. R. 51, Cr.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend two years, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognisable.
Warrant.
Bailable.
Not comp.

WHERE cumulative sentences under ss. 143 and 353 were upheld.—16 W. R. 70, Cr.

USING criminal force under s. 353, and rescuing a prisoner from lawful custody, cannot be punished separately.—12 W. R. 2, Cr.

A PEON attached to a Collectorate, being deputed to keep the peace during a daint, was on his way to execute the order with which he had been entrusted, when the accused, in attempting to deprive the peon of the *parwana*, assaulted him : Held that the accused was guilty of assaulting a public servant in the execution of his duty, and was rightly convicted under s. 353.—*Reg. v. Methi Mullah*, 13 W. R. 49, Cr.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Bailable.
Not comp.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

An indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—*Empress v. Shankar*, I. L. R., 5 Bom. 403.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncoog.
Summons.
Bailable.
Comp.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.
Cognizable.
Warrant.
Not bailable.
Not comp.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Any Mag.
Uncoog.
Summons.
Bailable.
Comp.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same explanation as section 352.

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

361. Whoever takes or entices any minor under fourteen years of

Kidnapping from lawful age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

THE consent of a kidnapped person is immaterial ; nor is it necessary for a conviction under s. 361 to prove force or fraud.—2 W. R. 5, Cr. See also 7 W. R. 36, Cr.

To bring a case under s. 361, there must be a taking or enticing of a child out of the keeping of its lawful guardian without his consent.—Queen v. Gunder Singh, 4 W. R. 6, Cr.

To support a conviction for kidnapping under ss. 361 and 363, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.—Queen v. Neela Bibee and another, 10 W. R. 33, Cr.

THE abduction of a minor girl under 16 years of age out of the custody of her lawful guardian is punishable under s. 361. It is not necessary to such a conviction that the abduction be proved to have been forcible.—Reg. v. Modhoo Paul, 3 W. R. 9, Cr.

A CHILD under ten years of age is, *prima facie*, subject to guardianship, and any one removing such child without permission properly obtained takes the risk of such act upon himself ; the fact of having omitted to enquire whether the child had a guardian or not, is no defence to a charge of kidnapping a minor from lawful guardianship under s. 361.—I. L. R., 3 Bom. 178.

If, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Indian Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or a guardian, or a jailor.—Reg. v. Mirza Sikandar Bhukut, 3 N. W. P. 146.

D S HAD two wives, N and J, by the latter of whom he had two daughters. In February 1876 he went with his wife N to a marriage in another village, leaving J and her two daughters at home. During the temporary absence of D S, J removed her two daughters to the house of her brother-in-law M, and married the elder girl (aged 8 years) to one G, with the assistance of three other persons : Held that the word “woman” in s. 366 included a minor female : Held further that there was a kidnapping from the lawful guardianship of D S within the meaning of ss. 361 and 366, notwithstanding the consent of the mother J to the girl’s removal.

Per Smyth, J.—Because the girl during the temporary absence of the father D S continued in his possession and under his control as her lawful guardian, and was not under the guardianship of her mother J.

Per Plowden, J.—Because the consent of a mere custodian in breach of the trust reposed by the person from whom the right to custody is derived is not the consent of the guardian in whose keeping the minor still continues through the custodian.—Dhara Singh v. Mussammat Kahnno, Panj. Rec., No. 8 of 1878, Cr.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

363. Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A CONVICTION under both ss. 363 and 366 is not good.—7 W. R. 56, Cr.

A CONVICTION under both ss. 363 and 369 is not good.—8 W. R. 35, Cr.

A CONVICTION of abduction quashed, no force or deceit having been practised on the person abducted.—Reg. v. Komul Doss, 2 W. R. 7, Cr.

A PERSON carrying off, without the consent of her father, a girl betrothed to him by the father, is guilty of kidnapping, punishable under s. 363.—4 W. R. 7, Cr.

THE conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent.—Reg. v. Srimotee Poddu, 1 W. R. 45, Cr.

AN offence under s. 363 is a continuing offence. Therefore, so long as the process of taking the minor out of the keeping of his lawful guardians continues, the offence of abetting may be committed.—I. L. R., 1 Mad. 173.

To support a conviction for kidnapping under ss. 361 and 363, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.—Queen v. Neela Bibee and another, 10 W. R. 33, Cr.

A WARRANT for the arrest of a person on a charge of abduction should state the intent with which the offence was committed, and the intent should be proved at the trial.—Bidhoomookhee Debee and two others v. Sreenath Haldar, 15 W. R. 4; 6 B. L. R. App. 29.

A SUBJECT of an independent state is amenable to the British Courts for the offence of kidnapping from British India, though, if the person so kidnapped were murdered beyond our territories, there would be no jurisdiction in respect of the homicide.—1 W. R. C. C. 89.

WHERE a betrothal, not amounting to marriage or transfer of guardianship, took place between the accused and the girl, it was held that that fact was no answer to the charge, though it might diminish the heinousness of the offence.—5 Rev., Jud., and Pol. Journal, Calcutta, p. 149.

To constitute the offence of kidnapping, under s. 363, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is a guardianship by a person who is lawfully entrusted with the care or custody of a minor.—Queen v. Buldeo, 2 N. W. P. 286.

THE abduction of a girl under 16 years of age, with intent to marry, without the consent of her lawful guardian, is punishable under ss. 363 and 366. The consent of the girl is immaterial, nor is it necessary to show that the enticing or taking away was by force or fraud.—Reg. v. Koordan Singh and Mohun Singh, 3 W. R. 15, Cr.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498, and for wrongful confinement of her under s. 343: Held that both sentences could not stand, and that as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—Reg. v. Ishwar Chandra Toge, W. R. 1864, 21, Cr.

THE accused was convicted by the Magistrate of abetting the kidnapping of a minor. The accused not knowing that the minor had left home without the consent of his parents, and at the instigation of K, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and K previous to the completion of the kidnapping by the latter: Held by

the High Court that so long as the process of taking the minor out of the keeping of her lawful guardian continued, the offence of kidnapping may be abetted, and that in the present case the conviction should be of an offence punishable under ss. 363 and 116.—I. L. R., 1 Mad. 173, Cr.

THE accused were convicted by the Magistrate of the district of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X., 1882), of kidnapping a married woman, being a minor, from lawful guardianship, for the purposes of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the retrial of the accused on a charge under s. 498, Penal Code. *Held* that the order of the Sessions Judge was illegal—1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X., 1882), to direct a new trial upon a new charge; and, 3rd, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—The Crown v. Kammu, Panj. Rec., No. 12 of 1879, Cr.

CERTAIN persons were charged under s. 417, and were discharged by the Magistrate enquiring into the offence under Act X. of 1872, s. 215 (corresponding with Act X. of 1882, s. 253). The Court of Session, considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of that district, suggesting to him to make the case over to a Subordinate Magistrate, with directions to enquire into any offence, other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an enquiry, and committed the accused persons for trial before the Court of Session on charges under ss. 363 and 420. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under Act X. of 1872, s. 296 (corresponding with Act X. of 1882, s. 438), the case not being a "Sessions case" within the meaning of that section, and that the commitment was consequently illegal: *Held* that there was no "direction to commit" within the meaning of that section, i.e., to send the accused persons at once to the Sessions Court, without further enquiry, and whether or not the enquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the enquiry upon the charges under ss. 363 and 420 was rightly held by the Subordinate Magistrate, and the commitment could not be impeached.—I. L. R., 2 All. 570, Cr.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

Illustrations.

- (a.) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.
- (b.) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A CONVICTION under both ss. 363 and 366 is not good.—7 W. R. 56, Cr.

A CHARGE of abduction will not lie under s. 366 when the woman, being of mature age, herself wishes to become a prostitute.—1 W. R. 45, Cr. (4 R. J. P. J. 119.)

TO SUSTAIN a charge under s. 366 of abducting a woman with intent that she be forced or seduced to illicit intercourse, there must be evidence to show the intent, or to raise the presumption that illicit intercourse was likely to result from the abduction.—Meer Alum Khan v. The Crown, Panj. Rec., No. 23 of 1868, Cr.

THE abduction of a girl under 16 years of age, with intent to marry, without the consent of her lawful guardian, is punishable under ss. 363 and 366. The consent of the girl is immaterial, nor is it necessary to show that the enticing or taking away was by force or fraud.—Beg v. Koordan Singh and Mohun Singh, 3 W. R. 15, Cr.

WHERE a girl, under 16 years of age, who was travelling with a chance protector (not her lawful guardian), went off with the accused voluntarily, and without any false inducement or force on his part, and without any agreement between the accused and the girl or her protector that she should prostitute herself, and the accused subsequently hired out the girl on two occasions for the purpose of sexual intercourse: *Held*, reversing the order of the Lower Court, that no offence was made out against accused under s. 373 or s. 366. In order to constitute an offence under s. 373, there must be a taking possession of the minor under some agreement or understanding, either with some third person or the minor, that the minor is to be employed for some purpose specified in the section.—Hardeo v. The Empress, Panj. Rec., No. 7 of 1880, Cr.

D S HAD two wives, N and J, by the latter of whom he had two daughters. In February 1876 he went with his wife N to a marriage in another village, leaving J and her two daughters at home. During the temporary absence of D S, J removed her two daughters to the house of her brother-in-law M, and married the elder girl (aged 8 years) to one G with the assistance of three other persons: *Held* that the word "woman" in s. 366 included a minor female: *Held* further that there was a kidnapping from the lawful guardianship of D S within the meaning of ss. 361 and 366, notwithstanding the consent of the mother J to the girl's removal.

Per Synth, J.—Because the girl during the temporary absence of the father D S continued in his possession and under his control as her lawful guardian, and was not under the guardianship of her mother J.

Per Plowden, J.—Because the consent of a mere custodian in breach of the trust reposed by the person from whom the right to custody is derived is not the consent of the guardian in whose keeping the minor still continues through the custodian.—Dhera Singh v. Mussanmat Kahn, Panj. Rec., No. 8 of 1878, Cr.

Ditto.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting
in order to subject a person
to grievous hurt, slavery,
&c.

363. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

S. 368 refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers.—6 W. R. 17, Cr. 17.

A MAN, by simply keeping in his house a girl whom he knows to be kidnapped, commits no offence under s. 368. To constitute an offence under this section, it must be shown that he concealed her or kept her out of the way.—5 N. W. P. 133, 189.

To CONSTITUTE the offence of “wrongfully concealing” a person who has been kidnapped or abducted, there must be a withdrawal of that person from the actual observation of others, by removal or otherwise, and merely giving false information about such person is not sufficient.—Phula Singh v. The Crown, Panj. Rec., No. 10 of 1874, Cr.

If, knowing that a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences, punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or a guardian, or a jailor—Reg. v. Mirza Sikundur Bhukut, 3 N. W. P. 149.

369. Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

A CONVICTION under both ss. 363 and 369 is not good.—8 W. R. 35, Cr.

370. Whoever imports, exports, removes, buys, sells, or disposes of, any person as a slave, or accepts, receives, or detains, against his will, any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

A BOUGHT a girl, aged 9, and gave her in marriage to his brother. A was convicted by the Magistrate of the district of disposing of the girl as a slave. Held that the conviction was not sustainable.—The Crown v. Roda, Panj. Rec., No. 19 of 1867, Cr.

R, HAVING obtained possession of D, a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent. Held that R could not be convicted of disposing of D as a slave under s. 370.—I. L. R., 2 All. 723 (F. B., Cr.).

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

Habitual dealing in slaves.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognisable.
Warrant.
Not bailable.
Not comp.

372. Whoever sells, lets to hire, or otherwise disposes of, any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

To CONSTITUTE an offence under s. 372, it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person.—I. L. R., 1 Mad. 164.

CERTAIN persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true: *Held* that such persons could not be convicted of offences under ss. 372 and 373.—I. L. R., 2 All. 694 (F. B. Cr.).

THE dedication of a minor girl under the age of sixteen years to the service of a Hindu temple by the performance of the Shej ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor, knowing it to be likely that she would be used for the purposes of prostitution, within the meaning of s. 372.—*Reg. v. Jaili Bhavin*, 6 Bom. H. C. Rep. Cr. Ca. 60.

THE prisoners were convicted, the one of disposing of and the others of receiving two children, females under the age of sixteen years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls. *Held* that offences under ss. 372 and 373 had been committed, and that the prisoners were properly convicted.—*Ex-parte Padmavati*, 5 Mad. Rep. 415.

THE facts which must be proved in order to support a conviction under ss. 372 and 373 discussed and explained.

The gist of the offence under either section consists in the *intention* that the minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or with the *knowledge* that it is likely that such minor will be employed or used for any such purpose. In the absence of any intention or knowledge of the kind referred to, the mere buying, selling, letting, or obtaining possession of a minor is not *per se* a criminal act, as the law of India now stands.

Per Rattigan, J.—An “unlawful” act may either be defined in connection with the definition of the term “illegal,” as contained in s. 43 of the Penal Code, or it may be said that every act is unlawful which the law has prohibited; but if the purpose be not “unlawful” within either of these definitions, although it may be immoral in a purely ethical sense, the offence will not be made out.

The principle laid down by the Chief Justice of the Madras High Court (5 Mad. H. C. Rep., p. 473), that to bring a case within the section “it is essential to show that possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having possession, whether ostensibly for a proper purpose or not; thus excluding the supposition that an obtaining of possession, in the sense of merely having sexual intercourse with a woman, could have been in the contemplation of the framers of the section,” approved.

Held, per Rattigan, J., in the present case, that as the facts failed to prove with reference to certain of the accused, and did not necessarily raise the presumption that they, in either obtaining possession of the girl (the subject of the charge), or in subsequently attempting to dispose of her, intended that she should be employed or used for some unlawful and immoral purpose, nor was there anything to show that the said accused knew or had reason to believe that the girl

was otherwise than unmarried, there was therefore not sufficient evidence to establish a charge under s. 372 or s. 373 of the Penal Code, and that the said accused should be acquitted. If the intention of the accused was to dispose of the minor for the purposes of sexual intercourse, which was intended to be illicit, the purpose would be clearly *immoral*; but to prove this kind of intercourse *unlawful*, within the meaning of s. 43 of the Penal Code, it would be necessary to produce such evidence as would support a civil action for seduction, because in the absence of such evidence the seduction would not furnish ground for a civil action, and consequently could not be pronounced "unlawful" within the terms of the above section. If the intention of the accused was to dispose of the girl upon the condition of marriage, the purpose would not be "unlawful," as although by Hindu and Muhammadan law a marriage contracted for a minor by any other than his or her lawful guardian would no doubt be irregular, and, under certain circumstances, capable of being set aside, it could hardly be said to be "unlawful and immoral" within the meaning of ss. 372 and 373 of the Penal Code, construing the first of these expressions as above.

Held, per Brandreth, J. (dissenting from Rattigan, J., as to the acquittal of two of the above-mentioned accused), that the Magistrate of the District (Sialkot), in the present condition of the district, with regard to the public notoriety of the traffic and the vigorous efforts of the police to suppress it, was justified in presuming that all parties who sheltered or passed on the girl in the present case were acting in concert, and knew well that she was a married woman who had been seduced from her husband to be sold for the advantage of the gang to some new husband; and that, therefore, they were guilty of an offence under s. 372, as they had combined to dispose off a minor under the age of 16 years, with the intent that such minor should be used for an unlawful and immoral purpose, *viz.*, a second illegal marriage.

Held, per Barkley, J. (differing from Brandreth, J., as to this), that it would not be safe to presume that the accused knew, or had reason to believe, that the girl in question was married; but (dissenting from Rattigan, J., as to this) that even on this assumption the facts established amounted to an offence. The purpose for which the prisoners obtained possession of the girl was to dispose of her in marriage for a pecuniary consideration; such purpose was clearly "immoral," and the purpose of bringing about an unlawful marriage would be an "unlawful" purpose, whether, under the circumstances of the case, it would be an offence or not, as it would be a purpose to do a thing which the person intending it had no lawful power or right to do. For to give validity to the marriage of a Hindu minor, the consent either of one of the guardians prescribed for the purpose by Hindu law or of some one to whom such guardian had presumably delegated his authority, is essential, and in the absence of such consent there is no marriage, though, in considering whether consent has been given, the subsequent conduct of the guardian may be taken into account.

Held, therefore, that one of the accused was guilty of an offence under s. 373 of the Penal Code, though not under s. 372, as he had not effected his purpose of disposing of the girl when arrested.—*Khushala v. The Empress*, Panj. Rec., No. 27 of 1880, Cr.

S, a married Mahomedan girl under 16, while living with N her grandmother, and in the absence of her husband, formed an adulterous intrigue with two Hindus, with the knowledge of N. S and N were then induced by the Hindus to remove to another village, that S might take up the trade of a prostitute. They there met J, a public woman, with whom they went to reside, and who introduced visitors to S, and received the money paid by them, in exchange for the board and food supplied to S and N. N was convicted, under s. 372, of disposing of a minor for the purpose of prostitution, and J was convicted, under s. 373, of obtaining possession of a minor for the purpose of prostitution: *Held per Jackson, J.*—That on the facts proved no offence was committed under the Penal Code. *Per Glover, J.*—N and J were both guilty under ss. 372 and 373 respectively, and their appeals should be dismissed.—*Reg. v. Nourjaun and Jaggat Tara*, 6 B. L. R., App. 34, and 14 S. W. R. 39, Cr.

THE accused were convicted by the Magistrate of the district of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X., 1882), of kidnapping a married woman, being a minor, from lawful guardianship, for the purposes of prostitution, and sentenced under

ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the retrial of the accused on a charge under s. 498, Penal Code. *Held* that the order of the Sessions Judge was illegal—1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X., 1882), to direct a new trial upon a new charge; and, 3rd, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—*The Crown v. Kamnu*, Panj. Rec., No. 12 of 1879, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

373. Whoever buys, hires, or otherwise obtains possession of, any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CERTAIN persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true: *Held* that such persons could not be convicted of offences under ss. 372 and 373.—*I. L. R.*, 2 All. 694 (F. B., Cr.).

WITH reference to the clause—obtains possession of any minor, &c.—it has been held that, where the charge is the purchase or acquisition of the minor for an immoral purpose, the proper Court to try the offence under s. 373 is the Court having jurisdiction in the place in which the purchase or acquisition was made, and not the Court having jurisdiction in the place of subsequent retention in another district.—*C. N. A. N. W. P.*, Part II., 131.

THE prisoners were convicted, the one of disposing of, and the other of receiving, two children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls. *Held* that offences under ss. 372 and 373 had been committed, and that the prisoners were properly convicted.—*Ex parte Padmavati*, Appellant, 5 Mad. II. C. Rep. 415.

WHERE a girl, under 16 years of age, who was travelling with a chance protector (not her lawful guardian), went off with the accused voluntarily, and without any false inducement or force on his part, and without any agreement between the accused and the girl or her protector that she should prostitute herself, and the accused subsequently hired out the girl on two occasions for the purpose of sexual intercourse: *Held*, reversing the order of the lower Court, that no offence was made out against accused under s. 373 or s. 366. In order to constitute an offence under s. 373, there must be a taking possession of the minor under some agreement or understanding, either with some third person or the minor, that the minor is to be employed for some purpose specified in the section.—*Hardeo v. The Empress*, Panj. Rec., No. 7 of 1880, Cr.

THE prisoner was tried upon a charge of having obtained possession of Dowlath Bee, a minor aged ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and having thereby committed an offence under s. 373. The evidence showed that the prisoner met Dowlath Bee, a girl eleven years old, in a street at Triplicane, and promised to give her a pice if she would accompany him into an uninhabited house close by and allow him to have sexual intercourse with her. The girl went willingly with the prisoner, and both were detected in the act of having sexual intercourse. The girl had gone out without permission, and had not attained the age of puberty; and

the evidence tended to show that the girl had not before had sexual connexion. The jury convicted the prisoner. *Held* by the High Court that the case proved against the prisoner did not make out the offence charged.—*Queen on the prosecution of Dowlath Bee v. Shaikh Ali*, 5 Mad. H. C. Rep. 473.

Per SCOTLAND, C.J.—It is not necessary that the buying, hiring, or obtaining possession of, should be from a third person, but it is necessary to prove that the possession was obtained on the understanding that the minor's person should be for some time completely in the control of the party obtaining possession, and the words, "for the purpose of prostitution," mean for the purpose of promiscuous sexual intercourse. *Seem*le that one single act of sexual intercourse is not an employment or use for an unlawful or immoral purpose.

Per Holloway, J.—S. 373 contemplates a contractual transaction of which other parties are the subjects, and the minor the object.

Per Innes, J.—Possession means a possession with the power of disposal.—5 Mad. H. C. Rep. 473.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Any Mag.
Cognizable.
Warrant.
Bailable.
Comp.

AMENDS cannot be awarded in a case of unlawful compulsory labour under s. 374.—5 W. R. 1, Cr.

OF RAPE.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

Rape.

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under ten years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under 10 years of age, is not rape.

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—*Empress v. Shankar*, 1 L. R., 5 Bom. 403.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable
Not comp.

HELD to be physically impossible that a girl of tender age should be killed by rape and not show any external signs of violence.—*Reg. v. Banee Madhub Mookerjee*, 1 W. R. 29, Cr.

THE measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female.—*Reg. v. Jhantah Noshiyo*, 6 W. R. 59, Cr.

SEXUAL intercourse by a man with a woman without her free consent—i. e., a consent obtained without putting her in fear of injury—amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory.—*Reg. v. Akbar Kajeo*, 1 W. R. 21, Cr.

A WAS convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under s. 59, to transportation for the same term: *Held* that, under ss. 376 and 511, a sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted under s. 59 to transportation for a longer term.—*Reg. v. Joseph Meriam*, 1 B. L. R., A. C., 5; 10 W. R. 10, Cr.

OF UNNATURAL OFFENCES.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

WITH reference to ss. 59 and 377, Penal Code, when an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—I. L. R., 1 All 43, Cr.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing, so long as it is attached to the earth not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

* See s. 24, Act XXVII., 1871.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Illustrations.

(a.) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(b.) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c.) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d.) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e.) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f.) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g.) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h.) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i.) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j.) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k.) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l.) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(m.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n.) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o.) A is the paramour of Z's wife. She gives A valuable property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p.) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

A BOAT is moveable property under s. 378, and may be the subject of theft.—16 W. R. 63, Cr.

THE taking of a fish in that portion of a navigable river over which a right of julkur exists in another person does not fall within s. 378.—19 W. R. 47, Cr.; 20 W. R. 15, Cr.

THE term "dishonest" is applied to a person who does any thing with the intention of causing wrongful gain or wrongful loss.—Reg. v. Preet Nath Banerjee, 5 W. R. 68, Cr.

THEFT is defined (s. 378) to be a dishonest taking of any moveable property out of the possession of any person without that person's consent.—Reg. v. Madaree, Chowkedar, 3 W. R. 2, Cr.

WHERE a number of persons come and forcibly carry off crops, they are, with reference to s. 114, all guilty of theft under s. 378, even though any of them took no part in the actual taking.—8 W. R. 59, Cr.

S. 378 does not include under the offence of theft the case where one joint-proprietor takes into his own sole possession property belonging to himself and his co-proprietors which had previously been in their joint custody.—Kamuddin v. Allah Buksh, 15 W. R. 51, Cr.; 6 B. L. R., App. 13.

POSSESSION of wood by a forest-inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft within the meaning of s. 378, if that consent was unauthorised or fraudulent.—I. L. R., 1 Bom. 610.

THE accused caught fish in the Sundri dund, a sheet of water five miles long by twenty feet broad. The right of fishing in this and other dunds had been leased to a contractor by the Government. *Held* that the fish in the pond were not in the possession of any person within the meaning of s. 378, and could not, therefore, be the subject of theft.—The Crown v. Jamal, Panj. Rec., No. 11 of 1878, Cr.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for theft.

Any Mag.
Cognizable.
Warrant.
Not bailable.
Not comp.

AMENDS cannot be awarded for a false charge of theft.—Reg. v. Gogun Sein, 2 W. R. 57, Cr.

THE cutting down of trees without removing them may amount to theft.—5 Mad. H. C. Rep. App. 36.

THE moving by the same act which effects the severance may constitute a theft.—5 Mad. Rep., Rul. XXXVI.

A DOUBLE sentence for theft and mischief is illegal and improper.—Bickub Aheer v. Auhuck Bhoonea, 6 W. R. 5, Cr.

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—Reg. v. Tanaakoch, 2 W. R. 63, Cr.

THE theft and the taking and retention of stolen goods form one and the same offence, and cannot be punished separately.—Reg. v. Sreemun Adup, 2 W. R. 63, Cr.

A PERSON acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it.—Reg. v. Ram Churn Singh, 7 W. R. 57, Cr.

A CONVICTION for theft under the Penal Code is illegal if the owner has given up all property in, and all possession of, the subject of the alleged theft.—4 Mad. H. C. Rep. App. 30.

IN a charge for stealing, it must be proved that at the time of the act being done the property stolen was in the possession of the prosecutor.—Hossenees Sheikh v. Rajkrishna Chatterjee, 20 W. R. 80, Cr.

THEFT is the sequel of, and cannot be separated from, house-breaking. A cumulative sentence of three years' imprisonment was held to be illegal in such a case.—Mussahur Daoudh, 6 W. R. 92, Cr.

THE taking of fish in that portion of a navigable river over which a right of julkur exists in another person does not fall within s. 378.—Hurimote Moddock v. Denonath Malo and others, 19 W. R. 47, Cr.

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust.—Bharut Chunder Christian, Appellant, 1 W. R. 2, Cr.

A BOAT may be the subject of theft. Although under s. 442 it is for certain purposes classed with houses, it does not cease to be moveable property under s. 378.—Reg. v. Mahar Dawalia, 16 S. W. R. 63, Cr.

A MUHAMMADAN married woman may be convicted of theft, or abetment of theft, in respect of property recognized by Muhammadan law as being the exclusive property of her husband.—Reg. v. Khatobai, 6 Bom. H. C. Rep. Cr. Ca. 9.

WHERE the accused forcibly seized a woman's bullocks for something which her husband may have owed in his lifetime, he was held to have caused wrongful loss, and therefore guilty of theft.—1 Rev. Crim. and Civ. Reporter, p. 60.

A PERSON can only be convicted of abetment of theft under the 1st explanation of s. 107, if he has procured, or attempted to procure, the commission of the theft. Mere subsequent knowledge of the offence is insufficient.—Reg. v. Shumeruddeen, 2 W. R. 40, Cr.

A HINDU woman who removes from the possession of the husband, and without his consent, her *palla* or *stridhan*, cannot be convicted of theft; nor can any one who joins her in removing it be convicted of that offence.—Reg. v. Natha Kalyan, 8 Bom. H. C. Rep. Cr. Ca. 11.

STEALING property, and then destroying it, are but one offence, *viz.*, theft—not two, theft and mischief; but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—The Crown v. Hamura, Panj. Rec., No. 37 of 1866, Cr.

THE prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. *Held* that the conviction was bad.—5 Mad. Rep., Rul. XXXVII.

A SENTENCE of whipping cannot, with reference to s. 7, Act VI. of 1864, be passed on a conviction for theft under s. 379, in addition to transportation for life under s. 75 of the Code, s. 379 only providing for sentences of imprisonment for a term not exceeding three years.—21 W. R. 40, Cr.

THE mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good.—Nassil Chowdhry v. Nannoo Chowdhry, 15 W. R. 47, Cr.

CONVICTION and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing on Government waste-ground—came within the meaning of s. 95, and did not, therefore, amount to an offence.—Reg. v. Kasya Ravji, 5 Bom. H. C. Rep. 35.

WHERE the accused caught fish in a portion of a navigable river which was claimed by the prosecutor, it was held that they could not be convicted of theft, and that, if the right of the prosecutor was infringed, he could sue in the Civil Court for damages.—Bhusun Parui and others v. Denonath Banerjee, 20 W. R. 15, Cr.

THE prisoner, acting *bona fide* in the interests of his employers, and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. *Held* that the prisoner was not guilty of theft.—Reg. v. Nobeen Chunder Holdar, 6 W. R. 79, Cr.

WHERE loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused as amends to the owner of such property, though the stolen property is recovered and restored to the owner.—Reg. v. Yessappa Ningappa, 5 Bom. H. C. Rep. Cr. Ca. 41.

A PRISONER who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under cl. 3, s. 107, and s. 109 read together.—Queen v. Boodhun Misser, 8 W. R. 78, Cr.

A SWAMP, the property of Government, having been surrounded with police-guards by Government to prevent salt being removed, *held* that the taking against the will of Government, and with the intention of obtaining an unlawful gain of salt, which had been spontaneously produced on the swamp, was theft.—The Queen v. Tamma Ghantaya and others, 1 L. R., 4 Mad. 228.

A BOAT may be the subject of theft. Although under s. 442 a boat is, for certain purposes, classed with houses, it does not cease to be moveable property under s. 378. A charge under s. 451 must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment.—Reg. v. Meher Dowalia and others, 16 W. R. 63, Cr.

THE accused caught fish in the Sundri dund, a sheet of water five miles long by twenty feet broad. The right of fishing in this and other dunds had been leased to a contractor by the Government. *Held* that the fish in the pond were not in the possession of any person within the meaning of s. 378, and could not, therefore, be the subject of theft.—The Crown v. Jamal, Panj. Rec., No. 11 of 1878, Cr.

ACCUSED was convicted by a Magistrate of theft of paddy. The facts found were that prisoner was found in possession of rice not thrashed in the usual way, and that, having no paddy-land of his own, he failed to account satisfactorily for the possession of the rice. *Held* that this was such a case as no Judge would leave to a jury, and that the conviction must be quashed as founded upon evidence which, if all true, would not justify the inference of guilt. The meaning of the term *corpus delicti* explained.—7 Mad. H. C. Rep. App. 19.

LOODUN was in terms of intimacy with Marwarced, who encouraged his visits; and when Loodun's father sent him away with a view to break-up the connection, the woman followed him. She was brought back, and Loodun returned and renewed the intimacy with her. He was prohibited from his father's house, and carried away things which he gave to the woman. Loodun was convicted by the Magistrate of house-trespass in order to commit theft, and Marwarced of abetment of that offence. *Held* that her conviction could not be sustained, as no act subsequent to the commission of an offence can be construed into an abetment.—The Crown v. Loodun, Panj. Rec., No. 11 of 1869, Cr.

WHERE an accused person, who had been previously convicted of theft under s. 379, was sentenced to whipping in addition to imprisonment upon a subsequent conviction of house-breaking by night with intent to commit theft under s. 457, and it appeared that theft was distinctly charged in the formal charges prepared by the Court, though s. 457 alone was cited, and it was found that the theft was completed: *Held* by the Full Bench that the omission to formally charge the accused with, and convict him of, theft, under s. 379 or s. 380, was not a ground for setting aside the sentence of whipping on the revision side of the Court, such omission not having in any way prejudiced the accused in his defence.—Empress v. Radha, Panj. Rec., No. 41 of 1880, Cr.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by

manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—*Empress of India v. Sita Ram Rai*, I. L. R., 3 All. 181.

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393.

Held (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained.

Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it.

Per Elsmie, J., contra.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable.

Per Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there.

Held further (per Plowden, J.)—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft) as opportunity should offer within a determinate area (as, for instance, a village), would not be bad as being too vague.—*Sher Ali v. The Empress*, Panj. Rec., No. 18 of 1879, Cr.

380. Whoever commits theft in any building, tent, or vessel, which

Any Mag. Cognizable.
Theft in dwelling-house, building, tent, or vessel is used as a human
Warrant.
&c. dwelling, or for the custody of property, shall
Not bailable.
be punished with imprisonment of either description for a term which
Not comp.
may extend to seven years, and shall also be liable to fine.

A CATTLE-SHED has been held to be "a building used for the custody of property."—*Mad. H. C.*, Nov. 24, 1866.

WHIPPING may be substituted for any other punishment for the offence of theft in a dwelling-house.—*Reg. v. Jungloo Khan*, 3 W. R. 36, Cr.

THEFT, by constables, of property from the house they were employed to guard is punishable under s. 380, and not s. 409.—*Reg. v. Boidonath Singh*, 3 W. R. 29, Cr.

S. 71 of the Penal Code applies to the case of a person charged with "house-breaking" under s. 457, and "theft" committed under s. 380.—*Ram Gholam Singh, Petitioner*, 6 W. R. 59, Cr.

A HIBED boatman does not come within the definition of a clerk or servant under s. 381. Theft by such a person on board a boat comes under s. 380.—*Reg. v. Bawool Manjee*, 8 W. R. 32, Cr.

On conviction for theft in a dwelling under s. 380, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment.—*Sheikh Dulloo v. Zamiah Bebee*, 16 S. W. R. 17, Cr.

ALL that is necessary to constitute the offence of theft in a building under s. 380, is that the property should be under the protection of the building, and not that the prisoner entered the building unlawfully.—24 W. R. 49, Cr.

A DEPUTY Magistrate has no power to convict of theft (s. 380) where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458 and 459), but must commit on the latter charge.—*Puran Teele v. Bhuttoo Dome*, 9 W. R. 5, Cr.

THE splitting of one aggravated offence into separate minor offences (e.g. lurking house-trespass in order to commit theft under s. 457, into lurking house-trespass and theft under ss. 456 and 380) prohibited.—6 W. R. 39 (F. B., Cr.). See also 6 W. R. 48, 92, Cr.

A PRISONER may be convicted of theft in a building and of house breaking by night with intent to commit theft, though if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second.—*Reg. v. Tincowree*, W. R. 1864, 31, Cr.

WHERE the accused stole a piece of cloth spread out to dry on the top of a house, to which he got across by scaling a wall, it was held that he had not committed theft in a building, but simple theft. The fact that the roof was used for domestic purposes makes no difference.—1 Mad. Jur. 282.

ACCUSED, with intent to commit theft, entered at night a *dalan*, or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property: *Held* that the *dalan* was a building within the meaning of ss. 380 and 442, and that a conviction under s. 457 was therefore maintainable.—*Dad v. The Crown*, Panj. Rec., No. 10 of 1879, Cr.

S. 380, which makes it an offence punishable with seven years' imprisonment to commit theft in any building, &c., used as a human dwelling or for the custody of property, is intended to give greater security only to property deposited in a house, so as to be under the protection of the house, and not to property about the person of the party from whom it is stolen. Theft from the person in a dwelling house is, therefore, simple theft under s. 379.—*Tandri Ram v. The Crown*, Panj. Rec., No. 14 of 1876, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A HIRED boatman does not come within the definition of a clerk or servant under s. 381. Theft by such a person on board a boat comes under s. 380.—*Reg. v. Bawool Manjee*, 8 W. R. 32, Cr.

THE prisoners were charged with having stolen a sum of money shut up in a box and placed in the police treasury buildings, over which they, as *burkundazes*, were placed in guard. *Held* that the charge should have been made under s. 381 (theft by a servant in possession of property), and not under s. 409 (criminal breach of trust by a public servant).—*Reg. v. Juggernath Singh*, 2 W. R. 55, Cr.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing

of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a.) A commits theft on property in Z's possession ; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z, in case Z should resist. A has committed the offence defined in this section.

(b.) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing, and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393.

Held (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained.

Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it.

Per Elsmie, J., contra.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable.

Per Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there.

Held further (per Plowden, J.)—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—*Sher Ali v. The Empress*, Panj. Rec., No. 18 of 1879, Cr.

OF EXTORTION.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to

Extortion.

deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion."

Illustrations.

(a.) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b.) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(c.) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d.) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

THE tenor of a criminal charge is a fear of injury under s. 383, and extortion under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—7 W. R. 28, Cr.

THE making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 383.—18 W. R. 17, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class,
Uncog.
Warrant.
Bailable.
Not comp.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

THE mere going about and collecting money, upon an assertion that an order had issued to tax the persons upon whom the demand was made, is not extortion, but cheating.—5 Rev., Jud., and Pol. Jour., Cal., 147.

THE mere issue of kukam-nāna (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—Reg. v. Meajan and Obhoy Churn Doss, 4 W. R. 75, Cr.

THE tenor of a criminal charge is a fear of injury within the meaning of those words in s. 383. Extortion may be equally committed whether the charge threatened is true or false.—Reg. v. Mobarick and others, 7 W. R. 28, Cr.

WHERE accused extorted money by threatening to bring a criminal charge, it was held that he had committed extortion, whether the charge which he threatened to bring was true or false.—3 Rev., Civ., and Crim. Rep., Cal., 19.

TO amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury, and thereby dishonestly inducing him to part with his property.—Reg. v. Meajan and Obhoy Churn Doss, 4 W. R. 5, Cr.

THE making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 383.—Meer Abbas Ali v. Omed Ali, 18 W. R. 17, Cr.

WHEN a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion.—Reg. v. Dabelooddeen Sheikh, 5 W. R. 19, Cr.

A CHAUKIDAR who obtains money from another person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under s. 417 for cheating, or under ss. 383 and 384 for extortion.—Reg. v. Rannarain Chaukidar, 3 W. R. 32, Cr.

HELD that it is not necessary in a case of extortion, under the Indian Penal Code, that the threat should be used and the property received by one and the same individual, nor that the receiver should be charged with abetment, although that might be done.—Reg. v. Shoukar Bhogvatetal, 2 Bom. Rep. 417.

THE mere fact that the offence of extortion under s. 384 is committed in the presence of the village-chaukidár, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence.—In the matter of the petition of Gopal Chunder Sirdar. *Gopal Chunder Sirdar v. Foolmoni Bewa*, I. L. R., 8 Cal. 728.

UNDER s. 384 delivery of the property by the person put in fear is the essence of the offence. Where there is no delivery, but the person intimidated passively allows his property to be taken away, the offence is not extortion, but would be robbery, if the threats used came within the meaning of s. 390.—1 Rev., Civ., and Crim. Rep., Cal., p. 20.

WHERE a complainant charged a person, who was one of the public servants mentioned in s. 167 of Act XXV of 1861 (corresponding with s. 197 of Act X. of 1882), with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as one of extortion, and to proceed to trial without sanction for the prosecution.—*Reg. v. Paishram Keshav*, 7 Bom. H. C. Rep. Cr. Ca. 61.

A CONVICTION of extortion by a full power Magistrate, and an order on a Sessions Judge rejecting an appeal therein, reversed by the High Court, as there was no such fear of injury as is contemplated by s. 383, nor was the delivery of money by the complainants thereby induced, nor did it appear from the evidence that the money was obtained dishonestly by the prisoner, who might have demanded it, believing in good faith that he was entitled to it.—*Reg. v. Abdul Kadar*, 3 Bom. Rep. 45, Cr.

385. Whoever, in order to the committing of extortion, puts any

Putting person in fear of injury in order to commit extortion.

person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

386. Whoever commits extortion by putting any person in fear of

Extortion by putting a person in fear of death or grievous hurt.

death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable, Not comp.

387. Whoever, in order to the committing of extortion, puts or

Putting person in fear of death or of grievous hurt, in order to commit extortion.

attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

THE feigning of an attempt to commit suicide in order to extort money is an offence under s. 387.—*Reg. v. Gregory*, 1 Ind. Jur. N. S. 423.

388. Whoever commits extortion by putting any person in fear of

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

Ditto.

THE tenor of a criminal charge is a fear of injury under s. 383, and extortion under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—7 W. R. 28, Cr.

Ct. of Sea.
Uncog.
Warrant.
Not bailable.
Not comp.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

THE tenor of a criminal charge is a fear of injury under s. 383, and extortion under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—7 W. R. 28, Cr.

OF ROBBERY AND DACOITY.

390. In all robbery there is either theft or extortion.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(a.) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b.) A meets Z on the high road, shews a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c.) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d.) A obtains property from Z by saying : " Your child is in the hand of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such ; but it is not robbery, unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."

Dacoity.

THE definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law.—Reg. v. Khayrat Ally Beg, 3 W. R. 60, Cr.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

WHEN, in committing a theft, there is an intention and an attempt to cause hurt, the offence is robbery.—Reg. v. Teekai Bheer, 5 W. R. 95, Cr.

By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment.—Reg. v. Hushrut Sheikh, 6 W. R. 85, Cr.

A PERSON convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property.—Reg. v. Sheikh Muddun Ally, W. R. 1864, 27, Cr.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 392 and 394.—Reg. v. Mooktee Kora, 2 W. R. 1, Cr.

IN a trial for robbery, it is competent to the jury, if they disbelieve the evidence as to the assault (i.e., as to the circumstances of aggravation), to bring in a verdict of guilty of theft.—Reg. v. Sakbant Sheikh, 2 W. R. 13, Cr.

THEFT with violence is robbery. A conviction under s. 397 of using a deadly weapon whilst engaged in the commission of robbery or dacoity is equally good whether the number of thieves be five or under.—Reg. v. Dwarka Aheer, 2 W. R. 49, Cr.

WHEN a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion.—Reg. v. Dabelooddeen Sheikh, 5 W. R. 19, Cr.

WHERE persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges.—Reg. v. Iwaree Done and others, 6 W. R. 83, Cr.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Attempt to commit robbery.

Ditto.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 393 and 394.—Reg. v. Mooktee Kora, 2 W. R. 1, Cr.

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393.

Held (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained.

Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it.

Per Elsmie, J., *contra*—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable.

Per Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there.

Held further (*per* Plowden, J.).—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—*Sher Ali v. The Empress*, Panj. Rec., No. 18 of 1879, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 393 and 394.—*Reg. v. Mootkee Kora*, 2 W. R. 1, Cr.

WHERE, in a case of robbery attended with death, there was no intention of causing death, or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery.—*Reg. v. Chakor Huree and others*, 6 W. R. 16, Cr.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

A SENTENCE of fine only is illegal in a case of dacoity.—*Reg. v. Bhojah and others*, 6 W. R. 54, Cr.

A SENTENCE of fourteen years' imprisonment cannot be passed for dacoity under s. 395.—*Reg. v. Huroo Rujwar*, 13 S. W. R. 27, Cr.

In a case of dacoity a sentence of 14 years' transportation was held illegal, and reduced to ten years' transportation under s. 395.—Reg. v. Ramchand Punjab, 6 W. R. 88, Cr.

SEVERE sentence of transportation for life in a case of aggravated dacoity confirmed, as required by the state of the district.—Reg. v. Khooda Sonthal and others, 6 W. R. 9, Cr.

A PERSON convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente* Loch, J.).—Bhyrub Seal v. Koobeer Chung, W. R. 1864, 27, Cr.

THE Sessions Judge should record under what section, and on what grounds, he orders a portion of the fines inflicted on prisoners convicted of dacoity to be made over to the complainant.—Reg. v. Bissonath Mundle and others, 2 W. R. 58, Cr.

IF a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396. But he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—Reg. v. Rughoo, W. R. 1864, 30, Cr.

KNOWING of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of the dacoity, does not amount to an abetment of the dacoity.—Queen v. Jhugroo, 4 W. R. 2, Cr.

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.—Reg. v. Cassy Mul, 3 W. R. 10, Cr.

WHEN stolen property is found in the possession of dacoits, the offence of knowingly having in possession is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, *e.g.*, length of time or distance.—Reg. v. Ahoot Hossein and others, 1 W. R. 48, Cr.

WHEN a prisoner is apprehended eight days after the commission of a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.—Reg. v. Motee Jolaha, 5 W. R. 66, Cr.

S 511 of the Penal Code does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—Reg. v. Koonec, 7 W. R. 48, Cr.

FIVE men armed were discovered committing an act of house-breaking by night. One of the party was engaged in cutting a hole through the wall while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. *Held* that the crime of which they were guilty was house-breaking by night, and not dacoity.—Reg. v. Rewat Rajwar, W. R. 1864, 39, Cr.

THE evidence of an approver, for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only one article of the stolen property was found, was held insufficient, under the circumstances of this case, where the best witnesses were not examined, to support a conviction of the prisoners on a charge of dacoity.—Reg. v. Ramsagar and others, S. W. R. 57, Cr.

WHEN a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance does not take that offence out of the purview of s. 395. It is sufficient, for the application of the section, that the robbers cause or attempt to cause the fear of instant hurt or of instant wrongful restraint.—Reg. v. Kissore Pater and others, 7 W. R. 35, Cr.

WHERE the charge was originally one of dacoity under s. 395, but during the progress of the case the charge under that section was lost sight of, and the accused were put on their defence on a charge of being members of an unlawful assembly under s. 143: *Held* that, had the complaint been one under s. 143, and not under s. 395, it might have been made the subject of a summary trial under s. 222, Act X. of 1872 (corresponding with s. 260, Act X. of 1882).—21 W. R. 89, Cr.

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395 cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—*Reg. v. Shahabut Sheikh and others*, 13 W. R. 42, Cr.

A and B were committed for trial; the former for dacoity under s. 395, and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial, A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A the Sessions Judge convicted B. On appeal to the High Court, *held* that A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—*Empress v. Balá Pátel*, I. L. R., 5 Bom. 63.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

IF a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396. But he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—*Reg. v. Rughoob*, W. R. 1864, 30, Cr.

CASE of a prisoner who, after having committed dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Doorgs by the British Government, he was arrested, and, after conviction, was sentenced to transportation for life.—*Reg. v. Roopa*, 2 W. R. 49, Cr.

Ditto.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

UNDER s. 397, it is only the offender actually causing grievous hurt who is liable to the enhanced punishment.—*Mad. H. C. Rul.*, March 18, 1868.

WHERE, in consequence of a discrepancy between the finding and sentence in a case of dacoity, the finding was amended by substituting s. 395 for ss. 397 and 511.—7 W. R. 49, Cr.

THEFT with violence is robbery. A conviction under s. 397 of using a deadly weapon whilst engaged in the commission of robbery or dacoity is equally good whether the number of thieves be five or under.—*Reg. v. Dwarka Aheer*, 2 W. R. 49, Cr.

S. 511 of the Penal Code does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—Reg. v. Koonce, 7 W. R. 48, Cr.

<p>398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon the imprisonment with which such offender shall be punished shall not be less than seven years.</p>	<p>Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.</p>
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<p>399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.</p>	<p>Ditto.</p>
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<p>400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.</p>	<p>Ditto.</p>
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In order to establish a charge under s. 400 it is necessary to make out that there existed at the time specified a gang of persons associated together for the purpose of habitually committing dacoity, and the accused was one of the gang.—23 W. R. 18, Cr.

<p>401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.</p>	<p>Ditto.</p>
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In the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (s. 401), the Judge should, in his charge, put clearly to the jury (1) the necessity of the proof of association; (2) the need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts. *Shriram Venkutasami*, 6 Mad. Rep. 120.

It is an offence under s. 401 to belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery; but it is not sufficient, to support a conviction under that section, that the accused should be proved to be simply a member of a robber-tribe; it should also be shewn that he actually consorted with persons who were themselves associated for the purpose of habitually committing theft or robbery.—*Peera v. The Crown*, Panj. Rec., No. 37 of 1869, Cr.

To sustain a conviction on a charge under s. 401 there must be (1st) proof of association, and (2nd) proof that the association was for the purpose of habitual theft, and that habit should be proved by an aggregate of acts. Where, therefore, the accused were arrested together in one village, and there was no doubt that each of the accused had individually committed theft or robbery, but it was not shown that there had been any association among the accused for the purpose of committing theft or robbery, much less for the purpose of *habitually* committing such offences: *Held* that the conviction under s. 401 was not sustainable.—*Afridi v. The Empress*, Panj. Rec., No. 9 of 1880, Cr.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

402. Whoever, at any time after the passing of this Act, shall be assembling for purpose of committing dacoity. one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine,

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

Any Mag.
Uncoog.
Warrant.
Bailable.
Not comp.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a.) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c.) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(a.) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b.) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c.) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d.) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e.) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f.) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

A SERVANT who retains in his hands money which he was authorized to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal misappropriation.—Reg. v. Bissessur Roy, 11 W. R. 51, Cr.

THE mere fact that the prosecution gave the prisoner time to make out his accounts, and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only.—*In re Sreekant Biswas*, 5 W. R. 56, Cr.

THIS was considered to be matter of trade between the prosecutrix and the prisoner, who took certain hides from the former, but refused to pay for them, and was held not guilty of dishonest misappropriation under s. 403.—Reg. v. Boystum Mochee, 17 W. R. 11, Cr.

THE offence of criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact, with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.—3 N. W. P. 30.

TO BRING a prisoner within s. 403, there must be actual conversion of the thing appropriated to the prisoner's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the section referred to.—Reg. v. Abdool, 10 W. R. 23, Cr.

WHERE money is paid to a person by mistake, and such person, either at the time of the receipt of the money, or at any time subsequently before its refund, discovers the mistake, and determines to appropriate the money, he is guilty of criminal misappropriation, but he is not guilty of cheating.—Reg. v. Shamsoondar, 2 N. W. P. 475.

TWO notes were stolen from A, which B (not a *bona-fide* holder for valuable consideration) tendered to C in payment for certain articles. C, not knowing B, refused to deal with him, whereupon B brought D, who was known to C, and the purchase was made by D, and paid for by him with the notes. *Held* that the part which D performed in the transaction amounted to a conversion of the notes to his own use.—1 Bom. H. C. Rep. 263.

IN a case in which an accused is charged with having dishonestly misappropriated property under s. 403, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it. Before depositions of witnesses taken before a Magistrate can be used in appeal, it should be shown either in the depositions or elsewhere that the evidence was read over or interpreted to the respective witnesses.—Reg. v. Parbutty Churn Chuckerbutty, 14 W. R. 13, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

S. 404 does not apply to immoveable property.—Reg. v. Girdhar Dharamdas, 6 Bom. H. C. Rep., Cr. Cn., 33.

A PERSON may commit the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death by dishonestly misappropriating the money entrusted to him, although he does not bring such money to his own use.—Enayet Hossein, Petitioner, 11 W. R. 1, Cr.

It is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under s. 404, that the accused should misappropriate it to his own use. Under s. 404 all the elements are required to constitute the offence of criminal misappropriation in respect of a person who is alive.—Reg. v. Nobin Chunder Sircar, 12 W. R. 39, Cr.

OF CRIMINAL BREACH OF TRUST.

Ditto.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(a.) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b.) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c.) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lākh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(d.) But if A, in the last illustration, not dishonestly, but in good faith believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e.) A, a revenue-officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f.) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

TO SUSTAIN a charge of criminal breach of trust, it is essential to establish the criminal character of the act by which the trust has been violated.—5 N. A., N. W. P., Part II., 49.

THE acceptor of a bond covenanting to return a sum embezzled was held to be precluded from prosecuting the giver for criminal breach of trust.—5 N. A., N. W. P., Part II., 86.

IF a mortgagor in possession in trust for a mortgagee causes the property to be sold for arrears of Government revenue, and purchases it *benamée*, he is liable to be punished for criminal misappropriation under s. 405.—5 W. R. 230, Cr.

A REFUSAL to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under s. 405.—Reg. v. Jaffir Nuik and another, 2 Bom. H. C. Rep. 133.

A PERSON who pledges what is pledged to him may be guilty of criminal breach of trust. There are two elements: (1) the disposal in violation of any direction of law or contract, express or implied, prescribing the mode in which the trust ought to be discharged; (2) such disposal dishonestly.—6 Mad. H. C. Rep. App. 28.

WHERE a conviction of a person for criminal breach of trust was quashed on the ground that he was a partner with the prosecutor.—9 W. R. 37, Cr. Overruled by F. B., who held that a partner dishonestly misappropriating or converting to his own use partnership property is guilty of criminal breach of trust under s. 405.—21 W. R. 59 (F. B., Cr.).

406. Whoever commits criminal breach of trust shall be punished

Punishment for criminal breach of trust.

with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Sess.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

IN cases which can lawfully be compounded, a composition entitling a party to bring a civil action thereupon amounts to a condonation of the criminal offence, and to an implied agreement not to prosecute. Where the terms of the composition are infringed, a civil suit would lie—not a criminal prosecution.—5 N. A., N. W. P., Part II. 227, 1864.

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was held that the Magistrate should have proceeded under s. 19, Act I. of 1871, taken with s. 169, Penal Code, and that the accused could not be convicted, under s. 406, of criminal breach of trust.—Rajkisto Biswas, Petitioner, 16 W. R. 52, Cr.

THE misappropriation of each separate item of money with which a person is intrusted is a separate offence, and the facts connected with it should form the subject of a separate inquiry. In such a case the duty of the committing Magistrate is to select certain distinct items and frame his charge upon them, and to adduce evidence specifically on those issues.—C. A. Chetter, Appellant, 15 W. R. 5, Cr.

TO CONSTITUTE the offence of criminal breach of trust there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. *Per* Glover, J.—Where the Criminal Procedure Code makes it necessary for a Magistrate before dismissing a charge to examine both the complainant and his

witnesses, it supposes that there has been already a *prima-facie* case made out; and where the complainant makes out such a *prima-facie* case, the Magistrate is bound first to examine all the complainant's witnesses before dismissing the charge; but in a case where there is clearly no *prima-facie* case established, the Magistrate is justified in dismissing the case at once.—*Isser Chunder Ghose v. Peari Mohun Palit*, 16 W. R. 39, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

407. Whoever, being entrusted with property as a carrier, wharfe, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

WHERE a constable who was improperly charged with the custody of Government monies, and gave security for the same, dishonestly converted it to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409.—8 W. R. 1, Cr.

A SERVANT who receives money for a specific purpose, and does not use it for that purpose, and, on being called on to account for the money, falsely says that he used it for that purpose, is guilty of criminal breach of trust under s. 408.—*Watson and Co. v. Golab Khan*, 10 W. R. 28, Cr.

ACCUSED was employed by the Panjáb Bank as its treasurer at Multán. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or gomastha, himself removing to other employment at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain monies of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated money from D, and had connived at D's defalcation; and convicted him of criminal breach of trust as a servant, and of abetting the same. In appeal it was contended for the accused, *inter alia*, that he was treasurer only in name, and had no dominion over the misappropriated property, consequently he was not a participator in reference to D's defalcation; and as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. Found by the Chief Court, that both accused and D were servants of the Bank, that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that, although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who was the Bank's treasurer, was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum, and had thereby abetted the breach of trust by a servant.—*Kaloo Ram v. The Crown*, Panj. Rec., No. 30 of 1868, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncoo.
Warrant.
Not bailable.
Not comp.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

THEFT, by constables, of property from the house they were employed to guard, is punishable under s. 380, and not s. 409.—Reg. v. Boidonath Singh, 3 W. R. 30, Cr.

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust.—Bharut Chunder Christian, Appellant, 1 W. R. 2, Cr.

THE prisoners were charged with having stolen a sum of money shut up in a box, and placed in the police treasury buildings, over which they, as burkundazes, were placed in guard. *Held* that the charge should have been made under s. 381 (theft by a servant in possession of property), and not under s. 409 (criminal breach of trust by a public servant).—Reg. v. Juggernath Singh, 2 W. R. 55, Cr.

A VILLAGE-SHROFF, whose duty it was to assist in collecting the public revenue, received grain from raiyats, and gave receipts as if for money received by virtue of a private arrangement: *Held* that he could not be convicted of criminal breach of trust by a public servant under s. 409, as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue.—4 Mad. H. C. Rep. App. 32.

S 409 does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a functionary. Where, therefore, it was proved that the head-clerk of an office entrusted the management of stamps with the knowledge and sanction of his superiors to one of his assistants, the latter was held guilty of criminal misappropriation by a public servant within the meaning of s. 409 when he made away with the stamps.—Reg. v. Ram Dhone Dey, 13 W. R. 77, Cr.

A TRAVELLER, with considerable property, partly cash and gold coins, put up at a serai, and, believing himself to be dying, sent to the police-station for protection to his property. The accused, the thana-moharir, went to the serai, and received charge of the property. *Held* by Lindsay and Fitzpatrick, JJ. (Plowden, J., dissenting), that the accused was entrusted with the property in his capacity of a public servant, within s. 409, as the accused was empowered by s. 95, Criminal Procedure Code (corresponding with s. 149, Act X. of 1882), to receive the property to prevent the commission of an offence, *i.e.*, theft by other persons taking advantage of the illness or death of the traveller.—Bhag Singh v. The Crown, Panj. Rec., No. 24 of 1876, Cr.

OF THE RECEIVING OF STOLEN PROPERTY.

410. Property the possession whereof has been transferred by theft, or by extortion, or by robbery, and property

Stolen property.

which has been criminally misappropriated, or in respect of which* criminal breach of trust has been committed, is designated as stolen property, “whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India.”† But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

MONEY obtained upon forged money-orders is not stolen property within the definition thereof given in s. 410.—24 W. R. 33, Cr.

THE police may, without any formal complaint, apprehend any person found with stolen property. They have also the power of searching any house suspected of containing stolen property.—Reg. v. Gowree Singh, 8 W. R. 28, Cr.

* The words, “the offence of,” have been repealed by Act VIII. of 1882, s. 9.

† The words quoted have been inserted by Act VIII. of 1882, s. 9.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

THE theft and the taking and retention of stolen goods form one and the same offence, and cannot be punished separately.—Reg. v. Sreemun Adup, 2 W. R. 63, Cr.

THE offence of dishonest retention of stolen property under s. 411 may be complete without any guilty knowledge at the time of receipt.—4 Mad. H. C. Rep. App. 43.

SMUGGLING india-rubber is not an offence under s. 411, without proof of guilty knowledge on the part of the accused that the rubber had been stolen.—18 W. R. 63, Cr.; 19 W. R. 37, Cr.

IN a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with a guilty knowledge.—Meer Yar Ali, 13 S. W. R. 70, Cr.

A PERSON convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente* Loch, J.).—Bhyrub Seal v. Koobeer Chung, W. R. 1864, 27, Cr.

A CHARGE under s. 411, of dishonestly receiving stolen property, should state that the articles found in the possession of the prisoner were the property stolen from A B, the owner thereof.—Reg. v. Siddu Balnath, 1 Bom. H. C. Rep. 95.

PROPERTY suspected of being stolen may be confiscated under s. 418 of Act X. of 1872 (corresponding with s. 517 of Act X. of 1882), although the person charged with stealing it is discharged.—Phulla Singh v. Ram Singh, Panj. Rec., No. 20 of 1873, Cr.

A'S PROPERTY was stolen and pledged by the thief to B, who received it without guilty knowledge. The Chief Court ordered the property to be restored to A under s. 132B of Act VIII. of 1869.—Bhara Mull v. The Crown, Panj. Rec., No. 37 of 1870, Cr.

A PRISONER cannot be convicted under s. 411 for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under s. 409, of having obtained possession by committing criminal breach of trust.—Reg. v. Shunkur, 2 N. W. P. 313.

IT is not illegal for a Magistrate, where loss has been occasioned to a person whose property has been stolen, to award to such person as amends any portion of fine inflicted on the accused, although the stolen property is recovered and restored to the owner.—5 Bom. H. C. Rep., Part II., 41.

UNLESS the sale take place in market overt (as explained in s. 13, para. 7, Panjáb Civil Code), a *bona fide* purchaser of stolen property acquires no title to it; he must restore the property to the original owner, looking to the seller for his remedy.—The Crown v. Gurdit Singh, Panj. Rec., No. 7 of 1872, Cr.

TO SUPPORT a conviction for receiving or possessing stolen property, there must be proof (1) that the property was of the description "stolen," and (2) that accused was in possession with a guilty knowledge.—The Crown v. Eshur Singh, Panj. Rec., No. 8 of 1867, Cr., and the same case, Panj. Rec., No. 13 of 1867, Cr.

WHEN a prisoner is apprehended eight days after the commission of a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.—Reg. v. Motee Jolaha, 5 W. R. 66, Cr.

THE accused were found in possession of stolen property, the produce of several separate thefts. *Held* that they could not be convicted of several separate acts of receiving, unless there was evidence that they did not receive all the property at one and the same time.—The Crown v. Rampershad, Panj. Rec., No. 5 of 1874, Cr.

WHEN stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other—*e. g.*, length of time or distance.—Reg. *v.* Abool Hossein and 11 others, 1 W. R. 48, Cr.

A Magistrate has jurisdiction under s. 418, Act X. of 1872 (corresponding with s. 517, Act X. of 1882), to deal with property stolen in British territory, notwithstanding that it may be seized in foreign territory and brought into British territory by the police.—Mussammat Kishen Kour *v.* The Crown, Panj. Rec., No. 20 of 1878, Cr.

THE goods received must be the identical goods which were stolen, and not something for which they had been sold or exchanged. Where A stole six notes for £100, and changed them into notes for £20, some of which he gave to B, it was ruled that B could not be convicted of receiving, as he had not received the notes which were stolen.—Arch. 373.

WHERE the accused, a foreigner, was found in foreign territory in possession of stolen property, but it was not shown that he was one of those who had committed the theft, or that he had possession of the property in British territory, *held* that a conviction under s. 411 was not sustainable. Mussammat Kishen Kour *v.* The Crown, Panj. Rec., No. 20 of 1878, Cr., cited and followed.—Hazar Mir *v.* The Empress, Panj. Rec., No. 16 of 1880, Cr.

THE prisoner, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.—Government *v.* Mussammat Nowlia, 1 Agra Rep. 9, Cr.

IN A summary proceeding under s. 418 of the Criminal Procedure Code (corresponding with s. 517, Act X. of 1882), where stolen property is in the possession of a *bona fide* purchaser, the proper order for a Magistrate to pass is to leave the property in the purchaser's possession, leaving the complainant to take such steps as he may think proper to establish his title as owner and recover possession from the purchaser.—The Crown *v.* Sawan, Panj. Rec., No. 21 of 1878, Cr.

WHERE property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession; and, unless he can do so, a jury may fairly infer in such circumstances that it was with a guilty knowledge that the prisoner took that which he knew to be not his own.—Reg. *v.* Shurruffodeen, 13 S. W. R. 26, Cr.

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395 cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—Reg. *v.* Shahabut Sheikh and others, 13 W. R. 42, Cr.

Nor only must it be shown that the property was originally stolen property, but also that it continued in that state at the time of the receipt. In one case goods had been stolen, and when the thief was detected, they were taken from him, and then restored by the owner's consent, that he might sell them to a person who had been in the habit of buying his booty. When the latter was indicted as a receiver, it was held that he could not be convicted, inasmuch as at the time of the receipt the goods were not *stolen* goods.—Reg. *v.* Dolan, 24 L. J. M. C. 59; Dears. 436; see Reg. *v.* Schmidt, 1 L. R. C. C. 15. (Mayne's Penal Code, 10th ed., p. 334.)

A PRISONER cannot be tried at the same trial for receiving or retaining (s. 411), and habitually receiving or dealing in (s. 413) stolen property. The proper course is to try the accused first for the offences under s. 411, and, if he is convicted, to try him under s. 413, putting in evidence the previous convictions under 411, and

proving the finding of the rest of the property in respect of which no separate charge, under s. 411, could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code (corresponding with s. 234 of Act X. of 1882).—In the matter of the petition of Uttom Koondoo and another. *Empress v. Uttom Koondoo and another*, I. L. R., 8 Cal. 634.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in communality with it, but he did not treat such property as joint family property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—*Empress of India v. Sita Ram Rai*, I. L. R., 3 All. 181.

THE mere being in possession of stolen property dishonestly without a guilty knowledge is not a substantive offence. It is an offence under s. 411 to dishonestly *receive* stolen property knowing or having reason to know the same to be stolen property, or to dishonestly *retain* it with the like knowledge. To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of or making away with the property with a guilty knowledge, that is, a charge of an offence under s. 414.—*Khona v. The Empress*, Panj. Rec., No. 31 of 1879, Cr.

ACCUSED was employed by the Panjáb Bank as its treasurer at Multán. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or *gomashtha*, himself removing to other employment at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain monies of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated money from D, and had connived at D's defalcation; and convicted him of criminal breach of trust as a servant, and of abetting the same. In appeal it was contended for the accused, *inter alia*, that he was treasurer only in name, and had no dominion over the misappropriated property, consequently he was not a participator in reference to D's defalcation; and as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. Found by the Chief Court, that both accused and D were servants of the Bank, that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who as the Bank's treasurer was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum, and had thereby abetted the breach of trust by a servant.—*Kaloo Ram v. The Crown*, Panj. Rec., No. 30 of 1868, Cr.

THE prisoner was tried at Bombay, under s. 411, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 (expl. 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the island of Mauritius. On the 29th October and the first November, 1879, certain letters addressed by the firm to their commission-agent at Bombay were abstracted from the post-office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs. 26,550. On the 1st November, 1879, the prisoner sent all six bills of exchange in a letter to the manager of a bank at Bombay,

requesting that the several amounts might be collected on the prisoner's own account, and remitted to him by bills in Mauritius. The sums were accordingly realized by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges; but, the jurisdiction of the Court having been challenged on his behalf, the question was reserved. *Held, per* Sargent and Melvill, J.J. (West, J., *dissentiente*), that the bills of exchange having been stolen at Mauritius, in which island the Indian Penal Code is not in force, could not be regarded as "stolen property" within the provisions of s. 410, so as to render the person receiving them at Bombay liable under s. 411; that the High Court at Bombay had, therefore, no jurisdiction, and the conviction must be quashed. Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused on the ground that the High Court had no authority to issue a commission in such a case, but the learned Judge (West, J.) reserved the question for the full Court. *Held* that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused.—*Empress v. S. Moorga Chetty*, I. L. R., 5 Bom. 338.

412. Whoever dishonestly receives or retains any stolen property, Ct. of Ses.
Cognizable,
Warrant.
Not bailable.
Not comp.

Dishonestly receiving property stolen in the commission of a dacoity.

the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from

a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

A SENTENCE of transportation under ss. 59 and 412 cannot exceed 10 years.—5 W. R. 16, Cr.

In a case of plundered property, before a person can be convicted under s. 412, it must be proved that he received or retained such property knowing it to be plundered.—9 W. R. 16, Cr.

In order to sustain a conviction, under s. 412, of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits.—*Rog. v. Jogeshur Bagdee and others*, 7 W. R. 109, Cr.

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395 cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—*Rog. v. Shahabut Sheikh and others*, 13 W. R. 42, Cr.

A and B were committed for trial; the former for dacoity under s. 395, and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial, A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A the Sessions Judge convicted B. On appeal to the High Court, *held* that A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—*Empress v. Bálá Pátel*, I. L. R., 5 Bom. 63.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

413. Whoever habitually receives or deals in property which he habitually dealing in knows or has reason to believe to be stolen property. property shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A PRISONER cannot be tried at the same trial for receiving or retaining (s. 411), and habitually receiving or dealing in (s. 413) stolen property. The proper course is to try the accused first for the offences under s. 411, and, if he is convicted, to try him under s. 413, putting in evidence the previous convictions under 411, and proving the finding of the rest of the property in respect of which no separate charge, under s. 411, could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code (corresponding with s. 234 of Act X. of 1882).—In the matter of the petition of Uttom Koondoo and another. *Empress v. Uttom Koondoo and another*, 1 L. R., 8 Cal. 634.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

414. Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

THE prisoner, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.—*Government v. Mussamut Nowlia*, 1 Agra Rep. 9, Cr.

WHERE the petitioner was convicted of having voluntarily assisted in concealing stolen railway-pins in a certain person's house and field, with a view to having such innocent person punished as an offender: *Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193, and of voluntarily assisting in concealing stolen property under s. 414.—1 L. R., 1 All. 379.

WHERE persons are charged with assisting in concealing or disposing of stolen property which they knew or had reason to believe to be stolen, the nature of the property, the time and place and manner in which it came into the possession of the accused, and the circumstances under which it was being made away with, must be taken into consideration. The mere fact that no particular person can be fixed with the offence of stealing will not exonerate them.—*Reg. v. Harishankar Fakirbhat*, 2 Bom. H. C. Rep. 130.

THE mere being in possession of stolen property dishonestly without a guilty knowledge is not a substantive offence. It is an offence under s. 411 to dishonestly receive stolen property knowing or having reason to know the same to be stolen property, or to dishonestly retain it with the like knowledge. To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of or making away with the property with a guilty knowledge, that is, a charge of an offence under s. 414.—*Khona v. The Empress*, Panj. Rec., No. 31 of 1879, Cr.

THE word "believe" in s. 414 is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been

honestly acquired.—*Empress v. Rango Timaji*, I. L. R., 6 Bom. 402. The following is a full report of the case :—

“This was a criminal application under the extraordinary jurisdiction of the High Court.

“On the 4th August, 1880, the accused was convicted by C. Wiltshire, First Class Magistrate of Dhárwár, of the offence of having voluntarily assisted in the disposal of stolen property under s. 414, and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 100, or, in default, to suffer imprisonment for six months more.

“On the 12th October, 1878, a bullock was sold by one Rango and purchased by Basalingápa, on the guarantee of the accused that it was the property of Rango. It was in evidence that the bullock belonged to one Maháruद्रápa, and that it had been stolen from him. In his examination before the Magistrate, the accused stated that he knew Rango, who had left his village some time ago during the famine, and gone to some other place to earn his livelihood; that Rango had told him (the accused) that he (Rango) had purchased the bullock for Rs. 16. From that statement of the accused the Magistrate came to the conclusion that the accused knew, or had reason to believe, the bullock to be stolen property, inasmuch as he knew Rango to be so poor that the latter was obliged to leave his village in order to earn the means of his livelihood in some other place. The Magistrate accordingly convicted the accused of the offence charged. On appeal, the conviction and sentence were upheld by the Sessions Judge (A. C. Watt) of Dhárwár on the 4th September, 1880.

“The accused thereupon made an application to the High Court for the exercise of its extraordinary jurisdiction.

“The High Court (Melvill and West, JJ.) sent for the record and proceedings of the case.

“On the receipt of the record and papers, the application was heard by Melvill and Nánábhái Haridás, JJ.

“*Máneksháh Jehángirsháh* for the accused—There is no evidence in the case to show that the accused knew or had reason to believe that the bullock was stolen property. There were no circumstances connected with the sale of the bullock which would induce any reasonable man to believe that it had been stolen. The lower Courts were wrong in inferring, from the acquaintance of the accused with Rango and his statement in his examination, any knowledge or belief on the part of the accused that the bullock was stolen property. The facts proved in the case do not constitute the offence of which the accused has been held guilty.

“The Hon. Rao Sáheb V. N. *Mandlik* (Acting Government Pleader) appeared on behalf of the Crown.

“The following is the judgment of the Court delivered by—

“Melvill, J.—It lay upon the prosecution in this case to prove that the accused person knew or had reason to believe that the bullock was stolen property. It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. The word “believe” in s. 414, Indian Penal Code, is a very much stronger word than “suspect,” and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. The only circumstance alleged in the present case is that Rango, whose honesty the accused guaranteed, had left his village during the famine to earn livelihood elsewhere. The Court find it impossible to hold that it is a legal inference from this single circumstance that the accused had reason to believe, or, in other words, that he had sufficient reason to feel convinced that Rango could not, during so long an interval, have acquired sufficient means to purchase a bullock of the value of Rs. 16.

“On the ground, therefore, that there is no evidence on which a conviction could legally be based, the Court reverse the conviction and sentence, and order the fine, if paid, to be refunded.”

OF CHEATING.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to

Cheating. deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(a.) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b.) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c.) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d.) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e.) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f.) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g.) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h.) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i.) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage-money from Z. A cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or

Cheating by personation. representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a.) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b.) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

AN indictment for cheating should state that the property obtained is the property of the person defrauded.—1 Mad. H. C. Rep. 31.

THE prisoner having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating, and falsely personating a public servant.—Reg. v. Sodanund Dass, 2 W. R. 29, Cr.

THE mere issue of hukam-nāma (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—Queen v. Meajan and Obhoy Churn Dass, 4 W. R. 75, Cr.

A PASSENGER by railway, travelling in a carriage of a higher class than that for which he has paid the fare, is not guilty of cheating under s. 417, but is indictable under the Railway Act.—Reg. v. Dayabbai Parjaram, 1 Bom. H. C. Rep. 140.

WHERE a person is charged with abetting the offence of cheating, it must be proved that the acts of the alleged abettor were intentionally done in concert with, and in furtherance of, the agents in the fraud.—3 N. A., N. W. P., Part I., 47.

A PERSON who induced a farmer to ferry him over the river by promise of payment, and then refused to pay the toll, was held to be guilty of cheating under s. 417.—2 N. A., N. W. P., Part IV., 431.

WHERE the prisoner was convicted of cheating by inducing a man to part with his money, and contract marriage with a girl, under the false impression that she was a Brahminess, the conviction was upheld.—Reg. v. Puddomonee Boistobee, 5 W. R. 98, Cr.

THE defendant was convicted of cheating. He applied to the tahsildar for a specified quantity of land on cowle-tenure free of tax for five years, and falsely represented that the land was waste land: Held that this was a good conviction.—6 Mad. H. C. Rep. App. 12.

TO JUSTIFY a conviction for the offence of cheating, there must be some evidence of an intention not to fulfil the promise, the omission to perform which completes the offence of cheating at the time when that promise is made.—Reg. v. Hargovandas, 9 Bom. H. C. Rep. 418.

THE prisoners received a Government promissory note, promising to return certain jewels pledged to them, but not intending to do so, and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender. Held that they were guilty of cheating.—Reg. v. Shrodurshun Dass, 3 N. W. P. 17.

TO induce a son to pay his father's debts by acting merely on his fear of consequences to his father, is not cheating. To describe those consequences to be more serious than in fact they were likely to be, may be to deceive, but is not cheating if done without any fraudulent or dishonest intention.—Reg. v. Raj Coomarr Banerjee, W. R. Sp. 25, Cr.

A CHAUKIDAR who obtains money from any person, either by fraudulent inducement or dishonestly, or by putting that person in fear of injury, is punishable under s. 417 (cheating), or ss. 383 and 384 (extortion), but not for criminal misappropriation of public money entrusted to him as a public servant.—Reg. v. Ramnarain Chaukidar, 3 W. R. 32, Cr.

THE mere taking money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention.—Reg. v. Heeramun Halwye, 5 W. R. 5, Cr.

WHERE the accused secretly entered an exhibition-building without having purchased a ticket, and was there apprehended, it was held that such entry did not amount to the offence of cheating under s. 417. Such entry, when unaccompanied by any of the intents specified in s. 441, does not amount to criminal trespass or any other offence.—Reg. v. Mehervanji Bejanj, 6 Bom. H. C. Rep., Cr. Ca., 6.

A PERSON hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending when he got the property to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating.—*Reg. v. Kudir Bux*, 3 N. W. P. 16.

WHERE two girls were brought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and married to two Rajputs after receiving the usual bonus: *Held* that the prisoners could not be convicted under s. 373, but of cheating and false personation under s. 415 and 416.—*Reg. v. Dabee Singh and others*, 7 W. R. 55, Cr.

A FOREMAN represented to his master that a certain sum was due to the workmen under him, and obtained a cheque for the amount stated to be due. The amount of the cheque exceeded by seven shillings the amount really due to the workmen. The foreman paid the workmen, but kept the surplus seven shillings to himself. He was held to have been guilty of obtaining the cheque under false pretences.—10 W. R. 28, Cr.

THE essence of the offence of cheating is deceit. Thus, where a workman stated that he had done more work than he really had, and requested payment for the work he stated he had done, and his master, knowing that it was a false overcharge, and wishing to entrap him, paid him the amount demanded, it was held that the workman could not be indicted for obtaining money under false pretences, as it was not the falsehood which induced his master to part with the money.—11 W. R. 51.

ACCUSED was found guilty of having endeavoured to evade payment of a railway-fare, by the production of an old pass, altered as to date and number of persons. *Held* that, although Act XVIII of 1854 provides for the punishment of any attempt to evade payment of fare, the accused was, in the present instance, rightly convicted, not under that Act, but under the Indian Penal Code, of an attempt to cheat, because there were distinct acts constituting cheating which accompanied such evasion.—*The Crown v. Gunput*, Panj. Rec., No. 6 of 1868, Cr.

THE accused purchased an agreement stamp from a licensed vendor, representing himself to be one Hema. The vendor entered Hema's name in the register as purchaser. *Held* that a charge of cheating could not be sustained. *Per* Plowden, J.—Though the accused, by personating Hema, deceived the stamp-vendor, and induced him to make an incorrect entry in his register, which act was likely to cause damage to the stamp-vendor, it was not shown that the accused had any fraudulent design upon the vendor, and it was not enough if his intention was to use the stamp to the injury of Hema. *Per* Lindsay, J.—There was a deception within s. 415, but the act of selling a stamp to one personating another could not possibly cause damage to a bona-fide vendor in any way, and the mere fact of the accused personating Hema did not induce the vendor to sell the stamp.—*Girdharee v. The Crown*, Panj. Rec., No. 16 of 1876, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Unoug
Warrant.
Bailable.
Not comp.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ditto.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating
by personation.

To induce a high caste man to marry a low-caste woman, by pretending that she was of a higher caste, is cheating by personation within the meaning of s. 416.—3 Rev. Crim. and Civ. Rep. 32.

A WITNESS deposing falsely in another name should be charged with giving false evidence under s. 193, and not with cheating by personation under ss. 416 and 419.—Reg. v. Prema Bhika, 1 Bom. H. C. Rep. 89.

THE prisoner having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating, and falsely personating a public servant.—Reg. v. Sodanund Dass, 2 W. R. 29, Cr.

WHERE B personated A (who was unable by sickness to go herself) in registering a deed, B was held guilty, not of cheating by personation under s. 419, but of an offence under s. 93, Act XX. of 1866.—11 W. R. 24, Cr.

WHERE a person represented a girl to be the daughter of one woman, when she was within his knowledge the daughter of another woman, *held* that he was guilty of cheating by personation under s. 416, and that it was unnecessary to bring in s. 109 relating to abetment.—Reg. v. Dhunput Ojha, 7 W. R. 51, Cr.

WHERE the accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother, when the girl was really of the Sudra caste, it was held that he was guilty of cheating by false personation under s. 416.—Reg. v. Mohin Chunder Sil, 16 W. R. 42, Cr.

A MAN, named Yesu, gave the accused four annas with which to purchase for him (Yesu) a stamp. When the stamp collector asked the accused for his name, he said "Yesu," instead of giving his own name. It was held that this was furnishing false information under s. 177, not cheating by personation under s. 419.—Reg. v. Raghoji Kanoji, 3 Bom. H. C. Rep., Cr. Ca., 42.

WHERE two girls were brought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and married to two Rajputs after receiving the usual bonus : *Held* that the prisoners could not be convicted under s. 373, but of cheating and false personation under s. 415 and 416.—Reg. v. Dabee Singh and others, 7 W. R. 55, Cr.

WHERE the accused enlisted in the police, calling himself a Jât, got an appointment, and drew pay as a Government servant, whereas he was in reality an Ahir, a caste whose enlistment was prohibited, which fact was well known to the accused : *Held* that the Magistrate rightly held that the offence of cheating by personation had not been committed. *Seemle*, that the accused might have been convicted under s. 182.—The Empress v. Buddha, Panj. Rec., No. 24 of 1880, Cr.

A VENDOR proceeded, in company with three persons, to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's office. One of them there proceeded to personate the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence. *Held* on revision that, as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under ss. 92 and 94 of the Registration Act, and not under the Penal Code. Reg. v. Luttee Bewa, 2 B. L. R., A. Cr., 26.

420. Whoever cheats and thereby dishonestly induces the person

Cheating and dishonestly inducing a delivery of property.

deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Unocg.
Warrant.
Bailable.
Not comp.

A PERSON who purchased rice from a famine-relief officer at a certain rate (16 seers to the rupee), on condition that he should sell it at a seer the rupee less, ~~was~~ convicted of cheating under s. 420, because he did not sell it at the rate agreed

on, but at 12 seers to the rupee. *Held* that, as within the meaning of ss. 23 and 24 there had been no wrongful gain or wrongful loss to any one, no offence had been committed under s. 415.—*Reg. v. Lal Mahomed and another*, 22 W. R. 82, Cr.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred, to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE A entered into an agreement with B not to compromise a case with C because he had assigned the benefit of the suit to B as a security for the due payment of some monthly instalment of money, and A notwithstanding did afterwards compromise the suit with C, *held* that A could not be convicted under 422 unless the compromise with C was made dishonestly or fraudulently towards B.—22 W. R. 46, Cr.

Ditto.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

To sustain a charge of concealment of property under s. 424, there must be evidence of the persons intended to be defrauded by such concealment.—*The Crown v. Ram Dways*, Panj. Rec., No. 16 of 1868, Cr.

THE offence which s. 424 contemplates is such a concealment or removal of property from the place where the property is deposited as can be considered fraudulent, whether the fraud is intended to be practised on creditors or partners. And

so it has been held that the removal of partnership-books by one partner to defraud the other partners comes under this section.—Gour Benode Dutt and another, Petitioners, 21 W. R. 10, Cr. ; 13 B. L. R. 308, Note.

WHERE a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal because it was placed in the custody of the judgment-debtor's husband, and that the husband had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax, convicted him of an offence under s. 424, the conviction was set aside as improper.—8 W. R. 17, Cr.

OF MISCHIEF.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits " mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(a.) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(b.) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c.) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d.) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e.) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f.) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(g.) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h.) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

Punishment for committing mischief.

Any Mag. Unco. Summons. Bailable. Comp. when the only loss or damage caused is loss or damage to a private person.

It is not mischief to graze cattle upon waste-land without paying Government fees.—5 Mad. H. C. Rul. 30.

A DOUBLE sentence for theft and mischief is illegal and improper.—Biobuk Aheer v. Auhuck Bhoonea, 6 W. R. 5, Cr.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.—6 Mad. H. C. Rep. App. 36.

THE grazing of cattle on lands belonging to Government without payment of the capitation-fee which the grass-renter was entitled to collect does not amount to mischief.—5 Mad. H. C. Rep. App. 29.

CUTTING and taking away bamboos (especially where there was a dispute as to the title to the land on which the bamboos were) was held not to be mischief under s. 425.—21 W. R. 38, Cr. But see 25 W. R. 46, Cr., *infra*.

CERTAIN persons were convicted of mischief for injuring a bridge whilst floating timber down the river. The owner of the timber was also convicted. *Held* that the convictions were bad, there being no evidence of intention or knowledge.—5 Mad. H. C. Rep. App. 40.

A PERSON commits mischief if he cuts trees on land which he claims, but of which possession after execution sale has been legally made over to another person, without any objection or formal intervention on his part.—Sonai Sardar v. Bukhtar Sardar, 25 W. R. 46, Cr.

WITHOUT evidence that the accused intended or knew that he was likely to cause wrongful loss or damage to the complainant, the offence of mischief under s. 425 was held not made out.—Kashi Nath Ghose and others v. Dino Bundhoo Mryce, 16 W. R. 62, Cr.

STEALING property, and then destroying it, are but one offence, *viz.*, theft—not two, theft and mischief; but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—The Crown v. Hamira, Panj. Rec., No. 37 of 1866, Cr.

THE authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of s. 425.—Ram Gholan Singh, Petitioner, 6 W. R. 59, Cr.

S. 425 SUPPOSES that the destruction was caused with the intention to cause wrongful loss and damage, and does not apply to cases of mere carelessness; and s. 17, Act III. of 1857, supposes the mischief (cattle-trespass) was done intentionally, and not by negligence.—*In re Araz Sircar*, 10 W. R. 29, Cr.

A CONVICTION for mischief was quashed in a case where it appeared that the complainant had formerly destroyed a crop belonging to the accused, and the latter, instead of complaining at once, merely bided his time, and then took the complainant's crop.—Mahomed Foyuz v. Khan Mahomed, 18 W. R. 10, Cr.

THE accused A, C, and another, members of the Municipal Committee of Jalandhar, permitted a tree within municipal limits to be cut for a public purpose, against the order of the Municipal Committee as a body. *Held* that accused had not committed the offence of mischief as defined in s. 425.—Amir Chand v. The Crown, Panj. Rec., No. 9 of 1878, Cr.

WHERE a person levelled, filled up, and cultivated a watercourse over his own lands, which conveyed water to the land of the prosecutor, it was held that this act was mischief within the meaning of s. 425, if the defendant knew that the prosecutor was entitled to the water, and that by this act his right would be obstructed.—2 Rev., Crim., and Civ. Rep., 47.

A COURT copyist obtained the file of a case from the record-office by pretending that a copy of the decree was required. He afterwards returned the file, having abstracted and destroyed a receipt given by the decree-holder for the money paid by the defendant in satisfaction of decree. *Held* that he was guilty of mischief.—The Crown v. Tahlul Ram, Panj. Rec., No. 112 of 1866, Cr.

TO constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property or such a change in the property or the situation of it as destroys or diminishes its value or utility, or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief.—4 Mad. H. C. Rep. App. 16; 7 Mad. H. C. Rep. App. 39.

MERE neglect on the part of an owner of cattle to keep them from straying into fields is not causing cattle to enter a compound within the meaning of s. 425. The section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that by so doing he is likely to cause damage.—*Forbes, Major, v. Grish Chandra Bhutacharjee*, 6 B. L. R., App., 3, and 14 S. W. R. 31, Cr.

THE prisoners had cleared a piece of Government land, cutting down without permission and appropriating the trees thereon, and were convicted of theft under s. 379, and of mischief under s. 425, and sentenced, the first prisoner to one month's imprisonment and a fine of Rs. 40, and the second prisoner to pay a fine of Rs. 10. *Held* that the convictions and sentences were not illegal, as the mischief preceded the theft, which could not have been committed till the trees were severed from the ground.—*Reg. v. Narayan Krishna*, 2 Bom. H. C. Rep. 416.

A RIGHT of fishery was in dispute between the zamindár of Bali and the zamin-dár of Moharajpur. The former obtained a decree declaring the fishery to be his, in proceedings in which the latter was not a party. Thereupon the servants of the zamindár of Bali removed a bamboo-bar which the Moharajpur people had erected to prevent the passage of fish. For this removal the Bali people were convicted of mischief and fined. On a reference to the High Court it was held that the conviction could not stand, as the Moharajpur zamindár had not shown that he was legally entitled to the fishery in dispute, and it did not appear that the defendants were acting otherwise than under a *bona-fide* belief that the Moharajpur people were encroaching on their master's rights, and, in so removing a bar which interfered with those rights, it could not be said that they acted with intent to cause, or knowing it to be likely that they would cause, wrongful loss to the opposing party.—*Reg. v. Dino Bundhoo Biswas and others*, 12 W. R. 1; 3 B. L. R. 17.

427. Whoever commits mischief, and thereby causes loss or

Committing mischief, and damage to the amount of fifty rupees or up-wards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp. when the only loss or damage caused is loss or damage to a private person.

A SENTENCE for being members of an unlawful assembly under s. 144 renders unnecessary separate sentences for house-trespass and mischief under ss. 448 and 427.—3 W. R. 54, Cr.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief. 6 Mad. Rep. Rul. xxxvii.

THE defendants were convicted of mischief under s. 427 for grazing their cattle upon waste lands without payment of certain capitation-fees, to which the prosecutor was entitled: *Held* that there was no evidence that the defendant caused mischief.—5 Mad. Rep. Rul. xxx.

428. Whoever commits mischief by killing, poisoning, maiming,

Mischief by killing or or rendering useless, any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

429. Whoever commits mischief by killing, poisoning, maiming,

Mischief by killing or or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Bailable.
Not comp.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Ditto.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, or river. public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Ditto.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Presy. Mag.,
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards,"* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Not bailable.
Not comp.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as

* The words quoted have been inserted by Act VIII. of 1882, s. 10.

a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

IN A case of mischief by fire with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling.—Reg. v. Durbaroo Polie, 8 W. R. 30.

HELD by Glover, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held* by Mitter, J., that the possession of a fire-ball and moving about with it cannot support a conviction under ss. 436 and 511. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511, it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it.—Reg. v. Doyal Bawri, 3 B. L. R., A. Cr., 55.

437. Whoever commits mischief to any decked vessel, or any vessel

Mischief with intent to destroy or make unsafe a decked vessel or one of 20 tons burden.

of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

438. Whoever commits, or attempts to commit, by fire or any

Punishment for mischief described in section 437, committed by fire or explosive substance.

explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

439. Whoever intentionally runs any vessel aground or ashore,

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

440. Whoever commits mischief, having made preparation for

Mischief committed after preparation made for causing death or hurt.

causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Ditto.

OF CRIMINAL TRESPASS.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property; or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

Criminal trespass.

AN intention to intimidate, insult, or annoy any person in possession of a house, does not mean to insult or annoy any person in constructive, but in actual, possession of the premises.—*Ishur Chunder Kurnokar v. Seetul Dass Mitter*, 17 W. R. 47, Cr.; 8 B. L. R. App. 62.

THE *bonâ fide* exercise of a supposed right of fishery without payment of rent where the zemindar had not established his right to receive rent from the parties exercising such right, or to eject them as trespassers, cannot render them liable to a conviction for criminal trespass under s. 441.—18 W. R. 25, Cr.

ACCUSED was *ejman* of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution, complainant obtained possession from the alienee. The accused entered on this land. *Held* that he had not committed the offence of criminal trespass.—6 Mad. H. C. Rep. App. 19.

WHERE the accused secretly entered an exhibition-building without having purchased a ticket, and was there apprehended, it was held that such entry, when unaccompanied by any of the intents specified in s. 441, does not amount to criminal trespass or any other offence.—*Reg. v. Mehervanji Bejanji*, 6 Bom. H. C. Rep., Cr. Ca., 6.

FORCEFUL entry upon land in the possession of another, and erection of a building thereon or any other act done with intent to annoy the person so in possession, irrespective of the question of title to the land, constitute criminal trespass under s. 441.—7 W. R. 28, Cr. See 9 W. R. 1, Cr.; 11 W. R. 11, Cr.; 14 W. R. 25, Cr.; 24 W. R. 58, Cr.

THE accused were convicted of criminal trespass under s. 441 for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. *Held* that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable.—5 Mad. Rep. Rul. xxxviii.

HELD by Jackson, J. (setting aside the order of the Magistrate, Markby, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441, because the complainant did not make out his title to the land. The offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right.—*Reg. v. Surwan Singh and others*, 11 W. R. 11, Cr.

442 Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

House-trespass.

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

A PERSON who enters a house with intent to commit adultery may be convicted of house-trespass. *Aliter*, if his intent was to have intercourse with an unmarried female.—8 Mad. H. C. Rep. App. 6.

A COURT-YARD, consisting of a walled enclosure with four *kothas* or chambers opening into it, and an outer door or gate leading into a side street, was held by a

majority of the Court (Plowden, J., dissenting) to be a "building" within the meaning of s. 442.—*Shera v. The Empress*, Panj. Rec., No. 35 of 1879, Cr.

ACCUSED, with intent to commit theft, entered at night a *dalan*, or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property. *Held* that the *dalan* was a building within the meaning of ss. 380 and 442, and that a conviction under s. 457 was therefore maintainable.—*Dad v. The Crown*, Panj. Rec., No. 10 of 1879, Cr.

443. Whoever commits house-trespass, having taken precautions
Lurking house-trespass. to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after sunset and
Lurking house-trespass by night. before sunrise is said to commit "lurking house-trespass by night."

445. A person is said to commit "house-breaking," who commits
House-breaking. house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(a.) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b.) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house breaking.

(c.) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d.) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e.) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f.) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g.) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h.) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

EFFECTING an entrance into a house at night by scaling a wall constitutes house-breaking by night under s. 445.—Reg. v. Emdad Ally, 2 W. R. 65, Cr.

WHEN the door of a shop was found broken open, *held* that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night.—Reg. v. Kenaram Bonsee, 4 W. R. 19, Cr.

WHERE a prisoner, convicted of "house-breaking in order to commit theft" and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under s. 457, Penal Code, and, on the second head of charge, to receive twenty stripes, under s. 2 of Act VI. of 1864, the separate sentences, though not illegal, were disapproved of, as contrary to the spirit and intention of the Whipping Act.—Reg. v. Genu Aku, 5 Bom. H. C. Rep., Cr. Ca., 83.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Any Mag.
Cognizable,
Summons,
Bailable,
Comp.

THE entry by one man on another's property, accompanied by the cutting down of trees in that property, is criminal trespass.—Reg. v. Jeenu Beebe, 1 W. R. 46, Cr.

THE unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of criminal trespass in the Penal Code.—1 L. R., 2 Cal. 354.

THE defendant was convicted under s. 447 for cultivating village waste-land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction.—5 Mad. Rep., Rul. xvii.

WHERE the trespass (if any) was not committed with the intent to commit an offence, or intimidate, insult, or annoy the persons in possession, but in the *bona fide* assertion of a claim of title, this does not amount to criminal trespass.—Queen v. Gokulchund, 2 N. W. P. 82.

ENTRANCE of a member of a Hindu joint family into the family dwelling-house is not criminal trespass. The entry of a stranger into a family dwelling-house, with the permission and license of one of the members, is not criminal trespass. Prankrishna Chundra, in the matter of the petition of, 6 B. L. R., App., 80; and 15 S. W. R. 6, Cr.

THE prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), it was held that it was not necessary to pass a separate sentence for the offence of house-trespass.—Reg. v. Bassoo Ranaiah, 2 W. R. 29, Cr.

A PERSON who forcibly enters upon property in the possession of another, and erects a building thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of s. 441, without reference to the question in whom the title to the land may ultimately be found.—*Reg. v. Ram Dyal Mundle*, 7 W. R. 28, Cr.

In order to convict of criminal trespass under s. 441, it must be proved that the property was in the possession of the prosecutor, and that the entry was made with intent to "commit an offence, or to intimidate, insult, or annoy any person in possession of the property."—In the case of *Kalinath Nag Chowdhry*, 9 W. R. 1, Cr.; and see *Reg. v. Chooramoney Tant*, 14 S. W. R. 25, Cr.

DEFENDANT was convicted of criminal trespass for including in his own land a portion of a public footpath. *Held* that as the public generally were entitled to the use of the footpath, there was no illegal entry by the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted.—6 Mad. Rep., Rul. xxvi.

DEFENDANT was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial ground. *Held* that the conviction was right. The person (corporate) in possession of the burial ground is the portion of the public entitled to use the burial ground, and the act of ploughing up the burial ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use.—6 Mad. Rep., Rul. xxv.

ON a conviction for criminal trespass under s. 447, the Joint-Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in s. 489 of the Criminal Procedure Code (corresponding with s. 106 of Act X. of 1882), for which such recognizance could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint-Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace.—*Reg. v. Jhapoo and others*, 20 W. R. 37, Cr.

ACCUSED for several years cultivated land under a lease from the Forest Department which was renewed annually. During the period of his occupation accused built a dwelling-house and made other improvements. The Forest Department requiring the land for conservation, accused was served with notice of ejectment, and he was told to remove the materials of his house. Accused refused to relinquish the land until payment of compensation for his improvements, whereupon he was criminally prosecuted by the Forest Department, and convicted by the Tahsildar of Kharian of criminal trespass under s. 447. *Held* that the conviction was illegal. In order to sustain a conviction for criminal trespass, it must be shown that the property was in the possession of some other person than the alleged trespasser.—*The Crown v. Foujdar*, Panj. Rec., No. 28 of 1878, Cr.

448. Whoever commits house-trespass shall be punished with Any Mag. Cognizable. Warrant. Bailable. Comp.
Punishment for house-trespass, imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

A SENTENCE for being members of an unlawful assembly under s. 144, Penal Code, renders unnecessary separate sentences for house-trespass and mischief under ss. 448 and 427.—3 W. R. 54, Cr.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of and punished for both the adultery and house-trespass, as they were distinct offences; but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—*The Crown v. Sheikh Munghli*, Panj. Rec., No. 5 of 1871, Cr.

449. Whoever commits house-trespass in order to the committing Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.
House-trespass in order to commit offence punishable with death. of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if

* Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

the offence* intended to be committed is theft, the term of the imprisonment may be extended to seven years.

A CHARGE under s. 451 must charge the accused with committing house-trespass with intent to commit some *specific* offence punishable with imprisonment.—Reg. v. Meher Dowalia and others, 16 W. R. 53, Cr.

A CHARGE of house-trespass with intent to commit adultery can be entertained without a complaint by the husband or the person having care of the woman. (*Per* Lindsay and Plowden, JJ., Fitzpatrick, J., dissenting).—The Crown v. Subz Ali, Panj. Rec., No. 2 of 1877, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

WHERE A goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass by putting such person in fear of wrongful restraint under s. 452.—Queen v. Nund Mohun Sirkar, 12 W. R. 33, Cr.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

IF A man break into a dwelling-house at night, and steal property therefrom, the crime is in its nature one single and entire offence, and should be treated accordingly.—Reg. v. Tonaokoch, 2 W. R. 93, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear

shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Not bailable.
Not comp.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Cognizable.
Warrant.
Not bailable.
Not comp.

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—Reg. v. Tonaokoch, 2 W. R. 63, Cr.

THE splitting of one aggravated offence into separate minor offences (e.g. lurking house-trespass in order to commit theft under s. 457 into lurking house-trespass and theft under ss. 456 and 380) prohibited.—6 W. R. 39 (F. B., Cr.). See also 6 W. R. 48, 92, Cr.

A PRISONER may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second.—Reg. v. Tincowree, W. R. 1864, 31, Cr.

FIVE men armed were discovered committing an act of house-breaking by night. One of the party was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. *Held* that the crime of which they were guilty was house breaking by night, and not dacoity.—Reg. v. Rewat Rajwar, W. R. 1864, 39, Cr.

457. Whoever commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years. Ditto.

A PERSON convicted of house-breaking, followed immediately by theft, is punishable only under s. 457.—Reg. v. Chytun Bowra, 5 W. R. 45, Cr.

IN drawing up a charge under s. 457, it is essential to mention the offence which the trespasser intended to commit.—Letter No. 119 of 1862 in 2 W. R.

S 71 of the Penal Code applies to the case of a person charged with "house-breaking" under s. 457, and "theft" committed under s. 380.—Ram Gholam Singh, Petitioner, 6 W. R. 59, Cr.

HOUSE-BREAKING by night and theft form a single offence, and cannot be punished separately, but under s. 457.—2 W. R. 63 (4 R. J. P. J. 563); 5 W. R. 49; 6 W. R. 48; 8 W. R. 31.

A SENTENCE of whipping cannot be passed on a person convicted of an attempt to commit house-breaking by night with intent to commit theft.—Reg. v. Yella valad Parshia, 3 Bom. H. C. Rep., Cr. Ca., 37.

A PERSON who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324.—Reg. v. Lukhun Doss, 2 W. R. 52, Cr.

WHERE facts prove (1) a house-breaking by night with intent to commit theft, and (2) theft in a building, it is not necessary to divide the charge into two counts. The actual commission of the theft is conclusive evidence of the intent, and it is therefore sufficient to convict for the major offence under s. 457.—Mad. H. C., Jan. 20, 1868; 2 Mad. Jur. 77: see too Reg. v. Saharai, 8 W. R. 31, Cr.

WHERE a first-class subordinate Magistrate sentenced a prisoner to six months' imprisonment under s. 457, and, finding that the prisoner was liable to enhanced punishment under s. 75, sentenced the prisoner to six months' further imprisonment, under s. 46 of the Code of Criminal Procedure (corresponding with s. 349, Act X., 1882), the latter sentence was set aside by the High Court.—5 Mad. Rep., Rul. iii.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Cognizable.
Warrant.
Not bailable.
Not comp.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

A DEPUTY Magistrate has no power to convict of theft (s. 380), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458 and 459), but must commit on the latter charge.—*Puran Telee v. Bhuttoo Dome*, 9 W. R. 5, Cr.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not comp.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A DEPUTY Magistrate has no power to convict of theft (s. 380), where the offence charge is lurking house-trespass by night with aggravating circumstances (ss. 458 and 459), but must commit on the latter charge.—*Puran Telee v. Bhuttoo Dome*, 9 W. R. 5, Cr.

To support a charge under s. 459 (causing grievous hurt, &c., whilst committing house-breaking) or s. 460 (causing grievous hurt, &c., at the time of committing house-breaking), the grievous hurt must be caused or the attempt must be made during the time that the house-breaking is being committed, and not after that offence is completed and the offender has left the premises.—*Imamud-din v. The Crown*, Panj. Rec., No. 17 of 1876, Cr.

Ditto.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A PERSON who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324.—*Reg. v. Lukhun Doss*, 2 W. R. 52, Cr.

To support a charge under s. 459 (causing grievous hurt, &c., whilst committing house-breaking) or s. 460 (causing grievous hurt, &c., at the time of committing house-breaking), the grievous hurt must be caused or the attempt must be made during the time that the house-breaking is being committed, and not after that offence is completed and the offender has left the premises.—*Imamud-din v. The Crown*, Panj. Rec., No. 17 of 1876, Cr.

THE appellants and another person attempted to break into a house by night for the purpose of committing theft, and were interrupted by the inmates, one of whom was killed by one of the accused. There was no evidence to shew which of the accused caused death. *Held* that the appellants could not be punished with transportation for life under s. 460, as the offence of house-breaking had been attempted only, and not committed.—*Saifudin v. The Crown*, Panj. Rec., No. 16 of 1874, Cr.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle, which contains, or which he believes to contain, property, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open closed receptacle containing property. Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

ACCORDING to the definition given in s. 442, a large circular receptacle for grain, made of straw, with an opening in the top, and situated in a back-yard, is not "a place for the custody of property," and therefore the offence of house-breaking cannot be committed in respect of it; but the offence really committed was the dishonestly breaking open a closed receptacle containing property.—*Mad. H. C. Rul.*, 1865, on s. 457.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody. Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

Forgery.

THE making of a fraudulent document without any criminal intent has been held to be no offence under this Code.—3 W. R., Letter No. 689 of 1865.

THE fraudulent preparation of a deed intending to cause injury to certain parties is not forgery unless such deed is a false document.—5 W. R., Letter No. 157 of 1866.

FALSIFICATION of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464.—I. L. R., 4 Bom. 657.

THE forgery of a copy of a document comes within the definition of forgery as given in s. 463.—*Eshan Chunder Dutt and others v. Prannauth Chowdhry*.—W. R. F. B. 71 (2 Hay, 236; Marshall, 270).

UNAUTHORIZEDLY signing a vakálatnáma in the name of co-decreeholders, and delivering it to a vakil with instructions to file a petition stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery under s. 463.—6 W. R. 78, Cr.

THE simple making of a false document constitutes forgery under s. 463, and it is not necessary that it should be issued or made known to the injury of a person's reputation, either by being presented in Court or shown to any person. A false document may be made in the name of a fictitious person.—*Reg. v. Shifait Ally*, 10 W. R. 61, Cr. ; 2 B. L. R. 12, A. Cr.

THE subsequent falsification of a *roznamcha-bahi* kept in the office of a deputy-inspector of schools by the moharar in charge thereof for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, was held not to fall within the definition of forgery as given in the Penal Code.—*Reg. v. Jageshur Pershad*, 6 N. W. P. 56.

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within s. 463 and s. 464, cl. 1.—*Queen v. Sookinoy Ghose*, 10 W. R. 23, Cr.

A SIGNED B's name to petitions presented by C to the *mámlatdár*, requesting his summary assistance, under Bombay Regulation XVII. of 1827, for recovery of rents from B's tenants. *Held* that, even if A had no authority from B to sign his name, and if A wished to deceive the *mámlatdár* into the belief that it was B himself who had signed the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to A or B, A's act did not constitute forgery within the meaning of the Penal Code. Avoidance of litigation is no wrongful loss to Government.—*Reg. v. Bhavanishankar*, 11 Bom. H. C. Rep. 3.

A SPECIALLY registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX. of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence, or making further enquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code (corresponding with s. 86 of Act X. of 1882). *Held* that he was justified in sanctioning the prosecution, but not in setting aside the decree.—*Reg. v. Nawab Singh*, 3 B. L. R. 9, A. Cr.

Making a false document. **464.** A person is said to make a false document—

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed ; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(a.) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b.) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(c.) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d.) A leaves with B, his agent, a cheque on a banker signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e.) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f.) Z's will contains these words, "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g.) A endorses a Government promissory note, and makes it payable to Z or his order, by writing on the bill the words, "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words, "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h.) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i.) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j.) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k.) A, without B's authority, writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(a.) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b.) A writes the word "accepted" on a piece of paper, and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c.) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.

(d.) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e.) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

FALSIFICATION of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464.—I. L. R., 4 Bom. 657.

It must be proved that the accused practised deception, so as to prevent a person from knowing the nature of the document, before the accused can be found guilty under s. 464 of making a false document.—Reg. v. Nujebutoollah, 9 W. R. 20, Cr.

WHERE the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery where there is nothing to show that it was done "dishonestly or fraudulently," within cl. 2, s. 464, but fabricating false evidence within s. 192.—*In re Mir Ekrar Ali*. The Empress v. Mir Ekrar Ali, I. L. R., 6 Cal. 482.

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within s. 463 and s. 464, cl. 1.—Reg. v. Sookmoy Ghose, 10 W. R. 23, Cr.

THE prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been repaid to the prosecutor, which, in fact, had not been repaid. *Held* that the prisoner was guilty of forgery under s. 464. Simply the omission of a count in the charge is a defect in the charge, and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another.—Anonymous, 1 Ind. Jur., N. S., 46.

Ct. of Ses.
Unoog.
Warrant.
Bailable.
Not comp.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

NO APPEAL lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it.—*Gunga Narain Sircar v. Azeezoonissa Beebee*, 5 W. R. Mis. 18.

THE offence of altering one part of a document executed in two parts for the mutual security of both the parties concerned deserves to be severely punished.—*Reg. v. Kishoree Mohun Dutt*, 17 S. W. R. 58, Cr.

A PERSON who consents to act under a mukhtarnama, and attaches his name in token of such consent, does not thereby become a forger if the mukhtarnama turns out to have been forged.—*Reg. v. Burjo Bariek*, 5 W. R. 70, Cr.

A CIVIL COURT has no power to order the commitment of persons for offences under ss. 471, 465, and 193, without holding the preliminary enquiry required by s. 474, Act X. of 1872 (corresponding with s. 478, Act X. of 1882).—22 W. R. 52, Cr.

WHEN a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery or of using as genuine a false document or of abetting forgery.—*Reg. v. Mohesh Chunder Acharjee and another*, 6 W. R. 20, Cr.

THE signing of a vakalatnāma in the name of co-decedentholders without their authority to do so, and delivering it to a vakil, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463.—*Reg. v. Gyanee Ram*, 6 W. R. 78, Cr.

THE sanction for prosecution mentioned in the Criminal Procedure Code refers to those cases only where a forged document has been put in evidence in a Civil or Criminal Court; but in other cases a Magistrate is competent, *proprio motu*, to enquire into allegations of forgery, and no sanction is necessary.—*Reg. v. Ramdhari Singh and another*, 10 W. R. 5, Cr.

A CONVICTION for forgery under the Penal Code cannot be had unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made.—*Reg. v. Ramgopal Dhur*, 10 W. R. 7, Cr.

D WAS tried on a charge of forging, &c., document A, and acquitted. In order to prove the charge, evidence was given in respect of another document, B, which was also alleged to have been forged, and the prosecutor mainly based his case on the alleged exact resemblance between the signatures to A and B, both of which, it was said, exactly resembled a third signature admitted to be genuine. *Held* by Peacock, C.J., and Kemp, J. (Markby, J., dissenting), that the acquittal in respect of the document A did not operate as an acquittal in respect of the document B.—*Reg. v. Dwarka Nath Dutt*, 2 Ind. Jur., N. S., 67; 7 W. R. 15, Cr.

A PERSON cannot be convicted of an attempt to commit an offence under s. 511 unless the offence would have been committed if the attempt charged had succeeded. A prisoner, who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed and the proof corrected by him; that the prisoner had had an intention of making such addition to the printed form as would make it a false document, and that he did this dishonestly and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under ss. 465 and 411 for attempting to commit forgery. *Held* that the conviction was wrong, and must be set aside.—In the matter of the petition of Riasat Ali *alias* Babu Miya *alias* Bodiuzzuma. *The Empress v. Riasat Ali alias Babu Miya alias Bodiuzzuma*, I. L. R., 7 Cal. 352.

466. Whoever forges a document purporting to be a record or Ct. of Sec.

Forgery of record of proceeding of or in a Court of Justice, or a Court or of public register. register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document

Warrant.
Not bailable.
Not comp.

purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A CONVICTION may be had, under ss. 466 and 471, for using as genuine a forged document purporting to be made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—5 W. R. 96, Cr.

THE subsequent falsification of a *romamcha-bahi* kept in the office of a deputy-inspector of schools by the molarar in charge thereof for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, was held not to fall within the definition of forgery as given in the Penal Code.—Reg. v. Jageshur Pershad, 6 N. W. P. 56.

Ct. of Ses.
Uncog.;
but cog.
when the
valuable se-
curity is a
pro. note of
Govt. of
India.
Warrant.
Not bailable.
Not comp.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

THE fraudulent alteration of a collectorate *chalán* is the forgery of a document as described in s. 467.—Reg. v. Hurrish Chunder Bose, W. R. 1864, 22, Cr.

THE prisoner was charged, under s. 471, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and Jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to ten years' transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be retried.—Reg. v. Gangaram Malji, 6 Bom. Rep., Cr. Ca., 43.

THE forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorize the delivery of moveable property, is not punishable under s. 467. The High Court will not alter a conviction by a Sessions Court, aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised.—Reg. v. Noro Gopal, 5 Bom. Rep., Cr. R., 56. Where prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the Penal Code.—Queen v. Lal Gamul, 2 N. W. P. 11.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

THE accused was charged with cheating by falsely and incorrectly reading out to an octroi-darogha the contents of an invoice of a consignment of goods, and so making the value appear to be less than it actually was; and also with forgery under s. 468, in having afterwards altered the invoice so as to make it correspond with what he had dictated to the darogha. *Held* that the alteration in the invoice having been made after the offence of cheating was complete, and being made by the accused for the purpose of saving himself or concealing the offence of cheating, a charge under s. 468 was not sustainable.—*Hurmukh Rai v. The Crown*, Panj. Rec., No. 15 of 1876, Cr.

469. Whoever commits forgery, intending that the document

Forgery for the purpose of harming the reputation of any person.	forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.	Ct. of Ses. Uncoog. Warrant. Bailable. Not comp.
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WHERE a draft petition was prepared with the intention of being used as evidence of a matter, it was held to fall within s. 29; and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469.—10 W. R. 61, Cr.

"A forged document."

470. A false document made wholly or in part by forgery is designated "a forged document."

471. Whoever fraudulently or dishonestly uses as genuine any

Using as genuine a forged document.	document which he knows or has reason to believe to be a forged document shall be punished* in the same manner as if he had forged such document.	Ct. of Ses. Uncoog. Warrant. Bailable. Not comp.
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THERE must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under s. 471.—*Reg. v. Jaha Bux*, 8 W. R. 81, Cr.

THE offence of uttering forged documents requires in this country to be punished with the severest punishment allowed by law.—*Reg. v. Mohesh Chunder Sircar*, 3 W. R. 13, Cr.

A PERSON may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of it.—*Reg. v. Nujum Ali*, 6 W. R. 41, Cr.

To support a conviction of the offence under s. 471, there must be a using of a document by a person who knows or has reason to believe that it is forged.—*Reg. v. Bholay Pramanik*, 17 W. R. 32, Cr.

WHERE an intention to use a forged document, if necessary, was inferred from the facts of the case, and from the conduct of the prisoner.—*Reg. v. Hatim Moonshiee*, alias Mahomed Hatim, 8 W. R. 11, Cr.

THE false alteration of a police-diary by a head-constable was held to fall under s. 471, as the forgery of a document made by a public servant in his official capacity.—*Reg. v. Raghuo Barick*, 11 W. R. 44, Cr.

UNDER s. 30, a deed of divorce is a valuable security. The presentation, therefore, of such a document for registration, and the obtaining of the registration, were held to be "using" within the meaning of s. 471.—11 W. R. 16, Cr.

A CONVICTION may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—*Reg. v. Prosono Bose*, 5 W. R. 96, Cr.

• WHERE a forged document is put in evidence before the Collector, the power of commitment rests with the revenue authorities, and does not, under any circumstances, extend to the Magistrate.—*Government v. Hungessur Sein*, 1 Ind. Jur., O. S., 11.

* When the forged document is a pro. note of the Govt. of India, the offence is cognizable and nonbailable.

A DEED of divorce is a "valuable security" within the meaning of s. 30, Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471.—*Queen v. Azimuddin and another*, 11 W. R. 15, Cr.

THE offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471. Such accused should, therefore, be charged under that section, and not under s. 196.—*I. L. R.*, 5 Cal. 717.

COUNTERFEIT seals and forged documents were found in the prisoner's possession, and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently.—*Reg. v. Kisto Soonder Deb*, 2 W. R. 5, Cr.

In a case in which the accused was charged with dishonestly using as genuine a pottah which he knew to be forged, and in which there was a fraudulent insertion, it was held that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge.—*Reg. v. Hemoruddi Mundul*, 9 W. R. 22, Cr.

THE prisoner was charged, under s. 471, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and Jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to ten years' transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be retried.—*Reg. v. Gangaram Malji*, 6 Bom. Rep., Cr. Ca., 43.

Ct. of Sess.

Uncog.

warrant.

Not bailable.

Not comp.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467, or with

such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

WHERE several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that under s. 473 there was a complete and separate offence committed in respect of every seal found, and that prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals in their possession were for the purpose of committing one particular forgery.—*Reg. v. Goluck Chunder and Teluck Chunder*, 13 S. W. R. 16, Cr.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Sea.
Uncog.
Warrant.
Not bailable.
Not comp.

Having possession of valuable security or will known to be forged with intent to use it as genuine.

IN A conviction under s. 474, the guilty intent must be proved, not inferred.—W. R. Sp., 12, Cr.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Counterfeiting a device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

IN order to a conviction under s. 475, the document which the accused has in his possession must have some counterfeit device or mark upon it, and it must be proved that the accused has the document in his possession with the intent of using such device or mark for the purpose of giving the appearance of authority to the document. The document must be of the nature mentioned in s. 467.—Reg. v. Rughoonundun Puttronnovees, 15 W. R. 19, Cr.

476. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Counterfeiting a device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete, any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall

Ditto.

Fraudulent cancellation, destruction, &c., of a will.

cancel, destroy, or deface, or secretes or attempts to secrete, any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall

be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

It has been held that a document which is unstamped, and therefore not admissible in evidence, may still be a valuable security.—7 Mad. H. C. Rul. 26.

THE tearing up of a pottah is the destruction of a valuable security within the meaning of s. 477.—3 W. R. 38, Cr.

OF TRADE AND PROPERTY-MARKS.

478. A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality, is called a trade-mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Unocog.
Warrant.
Bailable.
Not comp.

482. Whoever uses any false trade-mark or any false property-mark with intent to deceive or injure any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

483. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any trade or property-mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- 484.** Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place,

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class,
Uncoog.
Summons.
Bailable.
Not comp.

or that the same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

- 485.** Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade-mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade-mark,

Ditto.

Frandulent making or possessing die, plate, or instrument for counterfeiting public or private property or trade-mark.

with intent that the same shall be used for the purpose of denoting that any goods or merchandize were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

- 486.** Whoever sells any goods with a counterfeit property or trade-mark, whether public or private, affixed to or impressed upon the same or upon any case, wrapper, or receptacle in which such goods are

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncoog.
Summons.
Bailable.
Not comp.

packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to, or impressed upon, any goods or merchandize not manufactured or made by the person or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

- 487.** Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain, or that it

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
or 2nd class.
Uncoog.
Summons.
Bailable.
Not comp.

does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

- 488.** Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding section.

Ditto.

Punishment for using any such false mark.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncoog.
Summons.
Bailable.
Not comp.

489. Whoever removes, destroys, or defaces any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncoog.
Summons.
Bailable.
Comp.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(a.) A, a palanquin-bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(b.) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(c.) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(d.) A, by unlawful means, compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dāk company to drive his carriage for a month. B employs the dāk company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

An agreement for personal service in conveying indigo from the field to the vats is not a contract the breach of which is punishable by s. 490.—Nowa Tewaree and Mullen Jha, 6 W. R. 80, Cr.

S. 490 does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases.—Sage v. Nirunjun Chatterjee, 9 W. R. 12, Cr.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to attend on and supply the wants of helpless persons.

Presy. Mag. or Mag. of 1st or 2nd class, Uncog. Summons, Bailable. Comp.

THE Indian Law Commissioners give the following reasons for framing the above section : "Persons who contract to take care of infants, of the sick and helpless, lay themselves under an obligation of a peculiar kind, and may, with propriety, be punished, if they omit to discharge their duty. They generally come from the lower ranks of life, and would be unable to pay anything. They therefore proposed to add to this class of contracts the sanction of the penal law."

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both ; unless the employer has ill-treated him, or neglected to perform the contract on his part.

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

Ditto.

S. 492, which makes it an offence for "an artificer, workman, or labourer" to break his contract of service under the circumstances specified in the section, does not apply to domestic servants.—The Crown v. Kallu, Panj. Rec., No. 20 of 1876, Cr.

WHERE a labourer has once been punished under s. 492, it has been held that his refusal to fulfil the terms of the contract on his release from imprisonment does not render him liable to a second punishment.—2 Rev. Jud. and Pol. Journal. 24.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

Ct. of S. Uncog. Warrant. Not comp.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marrying again during lifetime of husband or wife.

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

A MAHOMEDAN, having four lawful wives alive and undivorced, commits bigamy when he marries a fifth.—Mac. M. Law, p. 255.

HELD, on a trial for bigamy, that the apostacy of a Hindu wife does not dissolve the marriage-union.—Crown v. Mussammat Gholam Fatima, Panj. Rec., No. 32 of 1870, Cr.

A NIKAH-MARRIAGE falls within the purview of ss. 494 and 495; it is a well-known and well-established form of marriage amongst Mahomedans.—Reg. v. Judoo Mussulmanee and Beedby Bewah, 6 W. R. 60, Cr. And the issue of a nikah-marriage would be legitimate under the Mahomedan law.—18 W. R. 28, Cr.

If the first marriage is valid, it is bigamy to marry again (*i. e.*, to go through a form of marriage known to the law as capable of producing a valid marriage), though the second marriage be void on another ground besides that of its being bigamous.—Gurbaksh Singh v. Shama Singh, Panj. Rec., No. 19 of 1876, Cr.

THE conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband. She cannot, therefore, during his lifetime enter into any other valid marriage-contract. Her going through the ceremony of nikah with a Mahomedan is, consequently, an offence under s. 494.—I. L. R., 4 Bom. 330.

ON a trial for bigamy, the defence was that the marriage of the woman (the accused) with the prosecutor was null and void, as the woman was a minor at the time, and married without the consent of her relations. She was a widow when she married the prosecutor. Held that her marriage with the prosecutor was legal.—Madha v. Mussammat Jeewee, Panj. Rec., No. 2 of 1869, Cr.

A MAHOMEDAN guardian of a married female infant, who, while her husband is living, causes a ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under ss. 109 and 494. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned.—I. L. R., 4 Cal. 10.

COURTS of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. *Bona fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge under s. 494 of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence under that section combined with s. 109.—I. L. R., 1 Bom. 347.

A CRIMINAL Court is bound to decide the question of marriage when it is essential to the decision of the question whether an offence has been committed or not. The doctrine of a certain school of Muhammadan divines in regard to the competency of a woman to marry again after the absence of her husband for four years does not entitle a woman so remarrying to the benefit of the exception to s. 494.—Alam Shah v. Jewan, Panj. Rec., No. 27 of 1878, Cr.

A CUSTOM of the Talapda Koli caste, that a woman may, without the permission of her husband, leave him, and in his lifetime contract a second valid marriage with another man, is invalid, as being entirely opposed to the spirit of the Hindu law; and such a second marriage is, as regards the woman, void, and punishable

under s. 494, and the man to whom the woman is so married, having sexual intercourse with her, will, if it be proved that he did not honestly believe that she had lawfully become his wife, be guilty of adultery under s. 497.—*Reg. v. Karsan Goja*, 2 Bom. H. C. Rep. 117.

A MEMBER of the caste of Ajanyá Rájput Guzars, residing in Khándesh, executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494; and that the priest who officiated at that marriage was an abettor under ss. 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.—*Empress v. Umi*, wife of Dhula, and seven others, 1. L. R., 6 Bom. 126.

THE accused were charged before a Magistrate of the first class with enticing away a married woman (s. 498). The enquiry having shown that an offence under s. 494 had apparently been committed, the proceedings were forwarded under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882), for disposal to the Magistrate of the District, who tried the case *de novo*, and convicted the accused under ss. 109—494. *Held* that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to enquire into and try an offence falling under chap. xx. of the Penal Code, and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 494; and that the conviction was therefore illegal. *Held*, also, that the Magistrate before whom the complaint was made of an offence under s. 498 had jurisdiction to try it, and therefore that it was not competent for him to proceed under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882).—*Faiz Ahmed v. The Empress*, Panj. Rec., No. 5 of 1879, Cr.

495. Whoever commits the offence defined in the last preceding

Ct. of Ses.
Unco.
Warrant.
Not bailable.
Not comp.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A NIKAH-MARRIAGE falls within the purview of ss. 494 and 495; it is a well-known and well-established form of marriage amongst Mahomedans.—*Reg. v. Jadoo Mussulmanee and Beedby Bewah*, 6 W. R. 60, Cr. And the issue of a nikah-marriage would be legitimate under the Mahomedan law.—18 W. R. 28, Cr.

A WOMAN who does not use all reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second marriage within 16 months after cohabitation with her first husband, without disclosing the fact of the former marriage to her second husband, is liable to enhanced punishment under s. 495.—*Reg. v. Enai Beebee*, 4 W. R. 25, Cr.

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—*Reg. v. Paterson*, 1. L. R., 1 All. 316.

496. Whoever dishonestly or with a fraudulent intention goes

Ditto.

Marriage ceremony fraudulently gone through without lawful marriage.

through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

PROOF of dishonest or fraudulent intent is necessary for a conviction, under s. 496, of falsely going through the ceremony of marriage. The mere allowing the marriage to take place in one's house does not amount to the abetment of an illegal marriage.—Reg. v. Kudum, W. R. 13, Cr.

Presy. Mag.
or Mag. of 1st
class,
Unog.
Warrant,
Bailable,
Comp.

497. Whoever has sexual intercourse with a person who is, and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

THE death of the husband does not necessarily put an end to a prosecution for adultery under s. 497.—4 Mad. Rep. Bul. Iv.

THE legality of a conviction of adultery before a jury was held not affected by the fact that the charge was triable, under s. 497, with assessors, and not by a jury.—24 W. R. 18, Cr.

A PERSON convicted of adultery under s. 497 need not be convicted also under s. 498, especially when there is no taking or enticing away of the woman.—Reg. v. Pochun Chung, 2 W. R. 35, Cr.

THE Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence. Strict proof of marriage is necessary.—Reg. v. G. R. Smith, 1 Ind. Jur., N. S., 8; S. C. 4 W. R. 31, Cr.

A MAN may be convicted of house-trespass with intent to commit adultery, even though the charge is made by a person other than the husband, provided there is no consent or connivance on the part of the husband.—3 Mad. Jur. 285.

WHERE the husband brought a specific complaint for adultery under s. 497, and the Magistrate framed a charge and convicted under s. 498, the Chief Court quashed the conviction.—*Sher Singh v. The Crown*, Panj. Rec., No. 18 of 1873, Cr.

WHERE the husband of a woman with whom the accused was alleged to have committed adultery professed himself unwilling to proceed with the prosecution, and the Assistant Judge thereupon ordered the accused to be discharged, the Court, in the exercise of its discretion, declined to interfere.—Reg. v. Ramlajerio, 5 Bom. Rep. 27, Cr.

PROOF of adultery required by a Criminal Court must not be less than that required in a divorce-suit. There must be, where the wife and the alleged adulterer are not caught in the act, evidence of criminal intention and opportunity. And there must be no consent or connivance on the part of the husband.—*Sher Ali v. The Crown*, Panj. Rec., No. 1 of 1874, Cr.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. Held that A could be separately convicted of and punished for both the adultery and house-trespass, as they were distinct offences; but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—*The Crown v. Sheikh Mungli*, Panj. Rec., No. 5 of 1871, Cr.

WHERE a prisoner, accused of adultery, sets up in defence a *natrá* contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the *natrá* that the woman was the wife of another man.—Reg. v. Munohar Ráiji, 5 Bom. Rep. 17, Cr.

THE accused committed house-trespass with intent to commit adultery. The husband refused to make a charge of house-trespass with intent to commit adultery, but made a charge of house-trespass with intent to commit theft, which was disproved. It was held that the Magistrate had acted rightly in refusing to convict on the charge laid by the husband, though the accused admitted that he had trespassed to carry on an intrigue.—5 Mad. H. C. Rep. App. 5.

A custom of the Talapda Koli caste, that a woman may, without the permission of her husband, leave him, and in his lifetime contract a second valid marriage with another man, is invalid, as being entirely opposed to the spirit of the Hindu law; and such a second marriage is, as regards the woman, void, and punishable under s. 494, and the man to whom the woman is so married, having sexual intercourse with her, will, if it be proved that he did not honestly believe that she had lawfully become his wife, be guilty of adultery under s. 497.—*Reg. v. Karsan Goja*, 2 Bom. H. C. Rep. 117.

THE complainant, a Muhammadan, alleged that he had been married six times; that all the women were living, but that he kept two of the first four partially divorced (i.e., by pronouncing the words of divorce only once or twice, and not thrice) in order to legalize his marriage with the fifth and sixth, and so keep within the law which permitted him to have four wives. Accused was charged with abducting or committing adultery with complainant's sixth wife. *Held* that the woman in question was not the wife of the complainant. Conviction quashed.—*Rabnawaz Khan v. The Crown*, Panj. Rec., No. 1 of 1875, Cr.

498. Whoever takes or entices away any woman who is, and whom he knows or has reason to believe to be, the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Enticing or taking away or detaining with a criminal intent a married woman. *Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp.*

A PERSON convicted of adultery under s. 497 need not be convicted also under s. 498, especially when there is no taking or enticing away of the woman.—*Reg. v. Pochun Chung*, 2 W. R. 35, Cr.

WHERE the man and the woman are perfectly agreed, the act of a third party, who merely accompanies the woman from her husband's house, amounts to abetment only.—*Rulings of Mad. H. C.*, 1864, on s. 498.

AN order of acquittal of an offence under s. 498 was upheld where it was found that the complainant had divorced his wife previous to making his complaint.—*Hukam Din v. Allachi*, Panj. Rec., No. 27 of 1879, Cr.

WHERE the husband brought a specific complaint for adultery under s. 497, and the Magistrate framed a charge and convicted under s. 498, the Chief Court quashed the conviction.—*Sher Singh v. The Crown*, Panj. Rec., No. 18 of 1873, Cr.

IN a charge under s. 498 (of taking away a married woman), marriage must be presumed from the fact of a man and wife living together, and from their own evidence (altogether un rebutted) that she is his legally married wife.—17 W. R. 5, Cr.

A FINDING exactly in the words of s. 498, though not actually illegal when it is doubtful which of the several offences therein mentioned has been committed, is a finding which ought not to be resorted to if it can be avoided, and it can be determined under which part of the section the prisoner is guilty.—22 W. R. 72, Cr.

ENTICING or taking away, with a criminal intent, a wife living in her husband's house, or in a house hired by him for her occupation and at his expense, during his temporary absence, is punishable under s. 498, provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her.—*Mutty Khan v. Mungloo Khansama*, 5 W. R. 50, Cr.

UPON an indictment under s. 498, charging that the prisoner took away one A, who was then (and whom he then knew to be) the wife of one M, with the intent that he might have illicit intercourse with the said A: *Held* that there was a taking within the meaning of the section, although the advances and solicitations had proceeded from the woman, and the prisoner had for some time refused to yield to her request.—*Reg. v. Kuniarasami*, 2 Mad. Rep. 331.

WHERE a procuress was convicted for inducing a married woman of 20 to leave her husband's house, and the facts showed that the wife had made her deliberate choice (she being of mature age), and was determined of her own free will to leave her husband and become a prostitute in Calcutta, the High Court altered the conviction from abduction to enticement, remarking that, whatever the wife's secret inclinations were, she would have had no opportunity of carrying them out had not the prisoner interposed.—*Reg. v. Srimotee Poddee*, 1 W. R. 45, Cr.

WHERE the accused (A and B) were charged under s. 498 with having detained C's wife in order that A might commit adultery with her, it was held that physical constraint is not an essential of the offence; that the words of the section, "conceals or detains," are intended to apply to the enticing or inducing a wife to withhold or conceal herself from her husband; that depriving the husband of his proper control over his wife for the purpose of illicit intercourse is the gist of the offence, just as it is of the offence of taking away a wife under the same section; that a detention occasioning such deprivation might be brought about simply by the influence of allurements and blandishments.—*Reg. v. Sundura Dass Tevan*, 4 Mad. Rep. 20; 3 Mad. Jur., No. 5, 186.

THE following remarks were made by the High Court in upholding a conviction in a case in which an accused had eloped with a woman from a house in Calcutta, hired for her by her husband, who was absent in Assam: "We cannot say (as the Sessions Judge said) that 'a wife is always the property of her husband, whether he is absent or present'; but we think it clear that a wife living in her husband's house, or in a house hired by him for her occupation, and at his expense, is, during his temporary absence, living under his protection, so as to bring the case within the meaning of s. 498, provided, of course, that the defendant knew, or had reason to believe, that she was the wife of the man from whose protection he took her, or on whose behalf the person from whom he took her had charge of her, and also provided he took her with the intent specified in the Act. To hold otherwise would be to declare the worst cases of seduction not punishable under the Penal Code.—1 Rev., Crim., and Civ. Rep., 45.

THE accused were charged before a Magistrate of the first class with enticing away a married woman (s. 498). The enquiry having shown that an offence under s. 494 had apparently been committed, the proceedings were forwarded under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882), for disposal to the Magistrate of the District, who tried the case *de novo*, and convicted the accused under ss. 109—494. *Held* that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to enquire into and try an offence falling under chap. xx. of the Penal Code, and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 494; and that the conviction was therefore illegal. *Held*, also, that the Magistrate before whom the complaint was made of an offence under s. 498 had jurisdiction to try it, and therefore that it was not competent for him to proceed under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882).—*Faiz Ahmed v. The Empress*, Panj. Rec., No. 5 of 1879, Cr.

THE accused were convicted by the Magistrate of the district of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X., 1882), of kidnapping a married woman, being a minor, from lawful guardianship, for the purposes of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the retrial of the accused on a charge under s. 498, Penal Code. *Held* that the order of the Sessions Judge was illegal—1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X., 1882), to direct a new trial upon a new charge; and, 3rd, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—*The Crown v. Kamnu*, Panj. Rec., No. 12 of 1879, Cr.

A PERSON was prosecuted before a Criminal Court in the Panjáb for enticing away a married woman with criminal intent, an offence punishable under s. 498. Such prosecution was legally instituted in such Court, and such offence was properly triable by it. Such Court discharged such person under the provisions of s. 215 of Act X. of 1872 (corresponding with s. 253 of Act X. of 1882). Subsequently it appeared that such person was detaining such woman at a place in the North-Western Provinces, and he was prosecuted before a Criminal Court of the district in which such place was situated for the same offence as he had been prosecuted for before the Criminal Court in the Panjáb, *viz.*, enticing away such married woman, and was convicted of that offence. *Held* that, although his previous discharge did not bar the revival of a prosecution for the same offence, such prosecution could only be revived in the Panjáb Court, and he could not be convicted under the latter part of s. 498 for detaining an enticed woman until the enticing had been proved, and such conviction had been properly set aside by the Court of Session.—*Empress of India v. Tika Singh*, I. L. R., 3 All. 251.

CHAPTER XXI.

OF DEFAMATION.

499. Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Defamation.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a.) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b.) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c.) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct, and no farther.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Illustrations.

(a.) A says, "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b.) But if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no farther.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(a.) A person who publishes a book submits that book to the judgment of the public.

(b.) A person who makes a speech in public submits that speech to the judgment of the public.

(c.) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(d.) A says of a book published by Z, "Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(e.) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man, and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustrations.

A Judge censuring in good faith the conduct of a witness or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustrations.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations.

(a.) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within this exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b.) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within this exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

THE Penal Code makes no distinction between written and spoken defamation.—*Reg. v. Mohunt Parsoram Dass*, 2 W. R. 36, Cr.

A SIMPLE assertion (nowhere disproved) regarding the way in which a sarishtadar had issued parwānas in an arbitration-suit does not amount to defamation.—*Reg. v. Hem Chunder Mookerjee*, 1 W. R. 24, Cr.

A PERSON using defamatory expressions for the protection of his son's interests is not privileged unless the imputation is made in good faith, *i.e.*, with due care and attention.—*Reg. v. Pursoram Dass*, 3 W. R. 45, Cr.

IN A case of defamation, proof of despatch by post to a certain district of the paper containing a defamatory matter is tantamount to proof of publication thereof in that district.—*Reg. v. Kally Doss Mitter and others*, 5 W. R. 44, Cr.

WHERE a person, while a defendant in a criminal case, used certain defamatory expressions, without due care and attention, against the prosecutor, it was held that such person was liable to a charge of defamation.—5 *Rev. Jud. and Pol. Jour.* 42.

A FALSE accusation not made in good faith renders the party making it liable to be charged with defamation. The fact that the complainant is a man of low caste will not debar him from prosecuting for defamation on his being falsely charged with theft.—*Reg. v. Nobin Dome and others*, 2 W. R. 35, Cr.

A LETTER, written by a Brahmin to the Brahmin community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and those of the Brahmin community, if written in good faith, falls within exceptions 8 and 10 of s. 499.—*Reg. v. Kassi Nath Bachaji Bagul*, 8 *Bom. H. C. Rep.* 168.

CASE of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed, as the gist of the offence (*viz.*, that the charge was not made in good faith) was entirely lost sight of. Compensation is not awardable in such a case.—*Assuruddee Khan v. Baboo Khan*, 1 W. R. 6, Cr.

To sustain a charge of defamation it is not necessary to prove that the complainant actually suffered, directly or indirectly, from the scandalous imputation alleged; it is sufficient that the accused intended, or knew, or had reason to believe, that the imputation made by him would harm the reputation of the complainant.—*Reg. v. Thakur Das*, 6 N. W. P. 86.

A PLEADER or mukhtar relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability for defamation by the 9th exception to s. 499, but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith.—*Queen v. Christian*, 2 N. W. P. 473.

A REPORT made by an officer in execution of his duty, and as the result of an order from his superior, which contained sweeping imputations against others—imputations which did not appear from the report to be made recklessly or unjustifiably,—does not amount to defamation, and is covered by the 9th exception to s. 499.—*Raj Narain Sein v. Deegobur Paul*, 14 S. W. R. 22, Cr.

THE act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputation within the meaning of s. 499. The criminal law of this country with regard to defamation depends on the construction of s. 499, and not on what may be the English law on the same subject.—*Greene v. Delaney*, 14 S. W. R. 27, Cr.

WHERE the Magistrate convicted accused, a police-officer, on a charge of defamation, on account of a statement made by him in a report to his superior officer, which statement he had elicited from a third party in the course of a police enquiry, the Chief Court, on the revision side, set aside the conviction and sentence as unsustainable, holding that the accused was merely acting in the discharge of his duty, and that the report was clearly privileged.—*Empress v. Sher Singh*, Panj. Rec., No. 23 of 1880, Cr.

ACT XVIII. of 1862 refers only to the High Court in its original criminal jurisdiction, and is not applicable to mofussil Courts. Section 27 of that Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of exception 9, s. 499, he must show that he has exercised due care and caution.—*Sealy v. Ramnarain Bose*, 4 W. R. 22, Cr.

THE accused, an inspector of police, was sent to enquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the Baniyas of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private enquiries that there is scarcely a woman in the houses of the Baniyas who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under s. 499 supported under the circumstances of the case.—*Rajnarain Sein*, in the matter of the petition of, 6 B. L. R., App., 42.

THE gumashta of a guru or priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one and treated him with disrespect. *Held* that the letter contained no expressions defamatory *per se*. If the person so treated was in a position entitling him to demand submission and to make non-submission an offence, then that position would render the communication privileged, and, if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation.—6 Mad. H. C. Rep., App. 46.

ACCUSED, a petition-writer, wrote for presentation to the Commissioner's Court a memorandum of appeal in which he alleged that the order appealed from was based on "conjectural grounds," and that a certain statement made in the order was "utterly false." The Commissioner directed the Deputy-Commissioner to pass a proper order in the matter, whereupon the Deputy Commissioner treated the case as one under s. 500, and after enquiry convicted accused. *Held* that the conviction was illegal, no complaint having been made to the Deputy Commissioner within the meaning of s. 142 of the Criminal Procedure Code (corresponding with ss. 191, 198, Act X., 1882).—*Nabi Shah v. The Crown*, Panj. Rec., No. 15 of 1878, Cr.

IN framing a charge of defamation under the Code of Criminal Procedure it is not necessary to negative the exceptions contained in s. 499, Penal Code. It is not an error in law for a Judge to require a person accused of defamation to prove the several distinct imputations contained in a libellous article published by him with the same strictness with which he would be required to prove them if he were the defendant in a civil action. The High Court, as a Court of Revision, cannot interfere with the findings of the lower Appellate Court on questions as to the truth of the allegations contained in a libel or the *bona fides* of the accused, but upon such questions are bound by the findings of the lower Court.—*Reg. v. Kikabhai Parbhudas*, 9 Bom. H. C. Rep. 451.

THE law of defamation which should be applied in suits in India for defamation is that laid down in the Indian Penal Code, and not the English law of libel and slander: *Held*, therefore, that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding. It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory

language for the protection of his own interests, he may fairly be held to have made out his good faith.—*Abdul Hakim (Plaintiff) v. Tej Chandar Mukarji (Defendant)*, I. L. R., 3 All. 815.

THE accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred: "Has his (the complainant's) character been enquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge. *Held* that, although the statement contained only the truth, it was incomplete and misleading, and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputation made by him on the complainant's character was made in good faith or for the public good.—*Imperatrix v. B. Kakde*, I. L. R., 4 Bom. 298.

C WAS put out of caste by a panchayat of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circulated a letter to the members of their caste generally, in which, stating that C and such woman had been put out of caste, and the reason for the same, and requesting the members of the caste not to receive them into their houses or to eat with them, they made certain statements applying equally to C or such woman. Such statements were defamatory within the meaning of s. 499, Penal Code. *Held* that, if such persons were careless enough to use language which was applicable to C, they did so at their peril, and they could not escape the responsibility of having defamed C by saying that they intended such language to apply to such woman. *Held* also, on the question whether such persons had acted in good faith, that, looking to the character of such letter, to the circumstances under which it was written, and to the fact that C had been put out of caste for the reason alleged, had such persons contented themselves with announcing the determination of the panchayat, and the grounds upon which such determination was based, they would have been protected; but, inasmuch as they did not so content themselves, but went further, and made false and uncalled-for statements regarding C, they had rightly been held not to have acted in good faith.—*Empress v. Ramanand*, I. L. R., 3 All. 664.

M, a medical man, and editor of a medical journal published monthly, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed,— "The advertiser is certainly entitled to be congratulated on this marvellous success; but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find that the line he has elected to adopt has not met with the approval of his brother-officer serving in the same province, and we have no hesitation in pronouncing his proceedings in this matter unprofessional." *Held* that, inasmuch as such advertisement had the effect of making such hospital a "public question," and of submitting it to the "judgment of the public," and M had expressed himself in good faith, M was within the third and sixth exceptions, respectively, to s. 499. *Held*, also, that M came within the ninth exception to that section. The sending of a newspaper containing defamatory matter by post from Calcutta, where it was published, addressed to a subscriber at Allahabad, is a publication of such defamatory matter at Allahabad. The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not.—*Empress of India v. McLeod and another*, I. L. R., 3 All. 342.

Ct. of Ses.,
Presy. Mag.,
or Mag. of Ist
class.
Unoog.
Warrant,
Bailable.
Comp.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defama-
tion.

- 501.** Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.
- Printing or engraving matter known to be defamatory.* Ot. of Sen., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Comp.
- 502.** Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.
- Sale of printed or engraved substance containing defamatory matter.* Ditto.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

- 503.** Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
- Criminal intimidation.*

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

- 504.** Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Intentional insult with intent to provoke a breach of the peace.* Any Mag. Uncog. Warrant. Bailable. Comp.
- 505.** Whoever circulates or publishes any statement, rumour, or report, which he knows to be false, with intent to cause any officer, soldier, or sailor in the army or navy of the Queen, to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Circulating false report with intent to cause mutiny or an offence against the State, &c.* Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Not bailable. Not comp.
- 506.** Whoever commits the offence of criminal intimidation shall be punished* with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence
- Punishment for criminal intimidation.* * Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp.
- If threat be to cause death or grievous hurt, &c.*

† Ct. of Ses., punishable with death or transportation, or with imprisonment for a
Presy. Mag., term which may extend to seven years, or to impute unchastity to a
or Mag. of 1st woman, shall be punished† with imprisonment of either description for a
class. a term which may extend to seven years, or with fine, or with both.
Uncog.

Warrant.
Bailable.
Not comp.

A THREAT to commit suicide if another person refuse to do a particular act is not criminal intimidation, unless that other person be interested in the person making the threat.—*Nubi Buksh v. Mussammat Oomra*, Panj. Rec., No. 109 of 1866, Cr.

WHERE the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkár, and would get him six months' imprisonment if he (complainant) did not let his sister go : *Held* that these words did not constitute criminal intimidation under s. 503 (there having been no threat of any injury in the sense of the Code) or any other offence.—*Reg. v Moroba Bhas Karji*, 8 Bom. H. C. Rep., Cr. Cn., 101.

AN accused who threatened three witnesses was convicted and sentenced to four months' imprisonment for the threat to each witness—in all to one year. It was held that, if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust.—*Reference in the case of Goolzar Khan*, 9 W. R. 30, Cr.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
class.
Uncog.
Warrant.
Bailable.
Not comp.

507. Whoever commits the offences of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Warrant.
Bailable.
Not comp.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(a.) A sits dharna at Z's door with the intention of causing it to be believed that by so sitting, he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(b.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

Presy. Mag.
or Mag. of 1st
class.
Uncog.
Warrant.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such

gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Bailable.
Not comp.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Any Mag.
Unco.
Warrant.
Bailable.
Not comp.

CHAPTER XXIII.*

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Triable by
Court by
which the
offence at-
tempted is
triable.
Cog. if offence
attempted is
cog.
Warrant or
summons
shall issue
according as
the offence is
one in respect
of which a
warrant or
summons
shall ordinari-
ly issue.
Bailable if
offence con-
templated is
bailable.
Compound-
able if offence
attempted is
compound-
able.

Illustrations.

(a.) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b.) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—Gholan Russool v. The Crown, Panj. Rec., No. 32 of 1866, Cr.

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—*Empress v. Shankar*, I. L. R., 5 Bom. 403.

* NOTE.—Sections 13, 14, and 15, Act XXVII, 1870 (to amend the Indian Penal Code), enact as follows:—

13. [Application of certain chapters of Penal Code.]—The following chapters of the same Code, namely, IV. (General Exceptions), V. (of Abetment), and XXIII. (Of Attempts to commit Offences), shall apply to offences punishable under the said sections 121A, 294A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under the said sections 124A and 225A.

14. [Sanction to prosecution under section 121A, 124A, or 294A.]—No charge of an offence punishable under any of the said sections 121A, 124A, and 294A, shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

15. [Saving of special and local laws.]—Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

S. 511 of the Penal Code does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—Reg. v. Koonce, 7 W. R. 48, Cr.

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—Reg. v. Peterson, 1 L. R., 1 All. 316.

To constitute the offence of attempt under s. 511, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence; and it must be done in attempting the commission of the offence. The provisions of s. 511 do not extend to make punishable, as attempts, acts done in the mere stage of preparation. Although such acts are doubtless done towards the commission of the offence, they are not done *in the attempt* to commit the offence within the meaning of the word attempt as used in the section.—Reg. v. Ramsaran Chowbey, 4 N. W. P. 46.

In order to constitute the offence of attempt to murder under s. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger: *Held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down in Reg. v. Collins and the provisions of the Indian Penal Code explained.—Reg. v. Francis Cassidy, 4 Bom. Rep., Cr., 17.

A PERSON cannot be convicted of an attempt to commit an offence under s. 511 unless the offence would have been committed if the attempt charged had succeeded. A prisoner, who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed and the proof corrected by him; that the prisoner had had an intention of making such addition to the printed form as would make it a false document, and that he did this dishonestly and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under ss. 465 and 511 for attempting to commit forgery. *Held* that the conviction was wrong, and must be set aside.—In the matter of the petition of Riasat Ali *alias* Babu Miya *alias* Bodiuzzama. The Empress v. Riasat Ali *alias* Babu Miya *alias* Bodiuzzama, 1 L. R., 7 Cal 352.

HELD by Glover, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held* by Mitter, J., that the possession of a fire-ball and moving about with it cannot support a conviction under ss. 436 and 511. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511, it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it.—Reg. v. Doyal Bawri, 3 B. L. R., A. Cr., 55.

OFFENCES AGAINST OTHER LAWS.

Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	By what Court triable.
If punishable with death, transportation, or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant	Not bailable	Not compoundable.	According to the provisions of section 29* of this Code (Act X. of 1882).
If punishable with imprisonment for three years and upwards, but less than seven.	Ditto	Ditto	Ditto	Ditto	
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons	Bailable	Ditto	
If punishable with fine only	Ditto	Ditto	Ditto	Ditto	

* 29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: Provided that—

- (a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;
- (b) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and
- (c) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

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THE NEW
CODE OF CRIMINAL PROCEDURE,

BEING

ACT X. OF 1882,

ANNOTATED WITH

RULINGS OF THE HIGH COURTS IN INDIA,

AND

A COPIOUS INDEX.

BY

D. E. CRANENBURGH,

PLEADER.

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P R E F A C E. .

THIS is an entirely new edition of the Code of Criminal Procedure, considerably improved and enlarged.

The various rulings of the High Courts in India have been carefully embodied in their proper places under each section.

To enhance the usefulness of the work I have inserted the following :—

1.—Table shewing correspondence of the section-numbers of Act X. of 1872 (as amended by Act XI. of 1874) with those of Act X. of 1882.

2.—Table shewing correspondence of the section-numbers of Act XI. of 1874 separately with those of Act X. of 1882.

3.—Table shewing correspondence of the section-numbers of the High Courts Act (X. of 1875) with those of Act X. of 1882.

4.—Table shewing correspondence of the section-numbers of the Presidency Magistrates Act (IV. of 1877) with those of Act X. of 1882.

5.—Marginal notes opposite each section of the new Code, showing the corresponding sections of the repealed Acts.

6.—A copious index.

The rulings of the Madras High Court have been taken from the Digest compiled by Mr. T. Weir, Registrar of the above Court.

D. E. CRANENBURGH.

Dec. 1, 1882.

THE NEW CODE OF CRIMINAL PROCEDURE.

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1, para. 1	...	1, para. 1		6	...	5	
2	...	2		7	...	5	
3	...	1		8, para. 1	...	5, and 29, cl. 1	
2, para. 1	...	2, 1		2	...	29, cls. <i>b</i> and <i>c</i>	
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3	...	558, 1		17	...	9, para. 2	
4, para. 1	...	4, 1				31, 2	
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* See Act XI., 1874, s. 1. † See Act XI., 1874, s. 2. ‡ See Act XI., 1874, s. 3.

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* See Act XI., 1874, s. 3.

§ See Act XI., 1874, s. 6.

** See Act XI., 1874, s. 9.

† See Act XI., 1874, s. 4.

|| See Act XI., 1874, s. 7.

†† Rep. by Act XI., 1874, s. 10.

‡ See Act XI., 1874, s. 5.

¶ See Act XI., 1874, s. 8.

‡‡ See Act XI., 1874, s. 11.

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* See Act XI., 1874, s. 13. † See Act XI., 1874, s. 14. ‡ See Act XI., 1874, s. 15.

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* See Act XI., 1874, s. 16. † See Act XI., 1874, s. 18. || See Act XI., 1874, s. 20.

† See Act XI., 1874, s. 17. § See Act XI., 1874, s. 19. ¶ See Act XI., 1874, s. 21.

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* See Act XI., 1874, s. 22. § See Act XI., 1874, s. 25. ** See Act XI., 1874, s. 28.

† See Act XI., 1874, s. 23.

|| See Act XI., 1874, s. 26.

†† See Act XI., 1874, s. 29.

‡ See Act XI., 1874, s. 24.

¶ See Act XI., 1874, s. 27.

‡‡ See Act XI., 1874, s. 30.

§§ See Act XI., 1874, s. 31.

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* See Act XI., 1871, s. 32.

† See Act XI., 1874, s. 33, para. 2.

† See Act XI., 1874, s. 33, para. 1.

§ See Act XI., 1874, s. 34.

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* See Act XI., 1874, s. 36.

† See Act XI., 1874, s. 37.

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424, para. 1	469	f ...	235, <i>Ill. g</i>
2	469	g ...	h
3	464	h ...	
425, para. 1	465, para. 1		

* See Act XI., 1874, s. 38. † See Act XI., 1874, s. 39. ‡ See Act XI., 1874, s. 40.

OLD CODE. [Act X. of 1872.]	NEW CODE. [Act X. of 1882.]	OLD CODE. [Act X. of 1872.]	NEW CODE. [Act X. of 1882.]
454, <i>Ill. j</i> ...	235, <i>Ill. i</i>	467 ...	195, para. 1, cl. <i>a</i>
<i>k</i> ...	.....	468 ...	<i>b</i>
<i>l</i> ...	235, <i>Ill. j</i>	469 ...	<i>c</i>
<i>m</i> ...	<i>l</i>	470, para. 1 ...	195, para. 2
<i>n</i> ...	<i>b</i>	2 ...	3
<i>o</i> ...	<i>m</i>	470, <i>expln.</i> ...	.....
<i>p</i> ...	<i>c</i>	471, paras. 1 & 2	476, para. 1
455 ...	236	para. 3 ...	2
456 ...	237	472, para. 1 ...	477, para. 1
457 ...	238, para. 1	2 ...	.....
457, <i>Ill. a</i>	238, <i>Ill. a</i>	3 ...	477, para. 2
<i>b</i> ...	.....	473 ...	487, para. 1
458 ...	239	474, paras. 1 & 2	478
459 ...	240	3	.....
460, para. 1 ...	403, para. 1	475 ...	479
2 ...	2	476 ...	478, para. 2
3 ...	3	477 ...	476
4 ...	4	478 ...	199
<i>Ill. a</i> ...	<i>Ill. a</i>	479 ...	199
<i>b</i> ...	<i>b</i>	480 ...	127
<i>c</i> ...	<i>c</i>	481 ...	128
<i>d</i> ...	.....	482 ...	129
<i>e</i> ...	403, <i>Ill. d</i>	483 ...	132, cl. <i>a</i>
<i>f</i> ...	<i>e</i>	484 ...	130
<i>g</i> ...	<i>f</i>	485 ...	132, cl. <i>c</i>
<i>h</i> ...	<i>g</i>	486 ...	<i>d</i>
461, cl. 1 ...	367, para. 2	487 ..	131, & 132, cl. <i>b</i>
2 ...	3	488 ...	132, cl. 1
462 ...	366	480 to 488 (Ch.	127 to 132 (Ch.
463 ...	367, para. 1	XXXVI.†)	IX.)
464, para. 1 ...	{ 367, paras. 1,	489, para. 1 ...	{ 106, para. 1
	2, & 4	2 ...	{ 123, paras. 1 to 3
2* ...	369	3 ...	{ 120, para. 1
3 ...	371, para. 1	4 ...	.....
4 ...	372		.....
5 ...	367, para. 5.	490 ...	{ 106, para. 1
6 ...	<i>Proviso</i>	491 ..	{ 123, paras. 1 to 3
7* ...	.....		{ 107
465 ...	537	<i>explns.</i> ...	{ 107, 117
466, paras. 1, 2, & 3	537	492 ...	{ 112
4 ...	196	492, <i>expln.</i> ...	{ 113
5† ...	197, para. 1	493, para. 1, cl. 1	{ 554
	2	2	{ 106, para. 1, last
	4, last para.		{ cl., and 118,
			{ <i>Proviso 2nd.</i>

* See Act XI., 1874, s. 41. † See Act XI., 1874, s. 42. ‡ See Act XI., 1874, s. 43.

OLD CODE. [Act X. of 1872.]	NEW CODE. [Act X. of 1882.]	OLD CODE. [Act X. of 1872.]	NEW CODE. [Act X. of 1882.]
493, para. 2 ...	.....	514, para. 3 ...	514, para. 4
494 ...	90	515, para. 1 ...	112, 114
<i>Proviso</i> ...	{ 108, para. 1	2 ...	109
	{ 114, <i>Proviso</i> .	3 ...	117, para. 2
495 ...	116	4 ...	511
496 ...	119	516 ...	122
497 ...	{ 118, para. 1	517 ...	111
	{ 123, para. 1	518, with <i>expln.</i>	
498, para. 1 ...	107, 123	1 ...	144, para. 1
2 ...	123	518, <i>expln.</i> 2...	2
499, para. 1 ...	.....	3...	3
2 ...	.....	4...	4
3 ...	123, paras. 1 & 4	519 ...	143
<i>expln.</i> ...	.....	520 ...	435, para. 3
500 ...	124, para. 1, &	521 ...	133
	125.	522 ...	134
501 ...	126	523, para. 1 ...	135
502, para. 1 ...	514, para. 1	2 ...	138, cl. <i>a</i>
2 ...	2	3 ...	139
3 ...	3	4 ...	141
4 ...	4	5 ...	138, cl. <i>c</i> , & 139
5 ...	1	524, para. 1 ...	138, cl. <i>b</i>
6 ...	121	2 ...	.....
7 ...	107, 514	525, para. 1 ...	{ 136, and 137,
503, para. 1 ...	514, para. 1		{ para. 1
2 ...	2 & 3	2 ...	{ 140, para. 2.
3* ...	4		{ 140, para. 3
504, para. 1 ...	109	526, para. 1 ...	{ 139, para. 1
2 ...	120, para. 1	2 ...	{ 140, para. 1
3 ...	.....		{ 140, para. 2
4 ...	109	527† ...	137, para. 2
505 ...	110	528 ...	142
506 ...	110	529 ...	1, para. 2
507, para. 1 ...	123, para. 2	530 ...	145
2 ...	3	531 ...	146
508 ...	123, para. 3	532 ...	147
509, para. 1 ...	112	533 ...	148, para. 1
2 ...	554	534 ...	522
510, para. 1 ...	123, para. 1	535 ...	1, para. 2
2 ...	5	536 ...	488
511 ...	124, para. 1	537 ...	489
512 ...	2	538 ...	490
513 ...	126	539 ...	558, para. 1
514, para. 1 ...	514, para. 1	540 ...	1, para. 2
2 ...	paras. 2 & 3	541 ...	1, para. 2

* See Act XI., 1874, s. 44.

† See Act XI., 1874, s. 45.

TABLE SHEWING CORRESPONDENCE OF THE SECTION-
NUMBERS OF THE HIGH COURTS ACT (X. OF 1875)
WITH THOSE OF ACT X. OF 1882.

Act X. of 1875.	Act. X. of 1882.	Act X. of 1875.	Act X. of 1882.
1 ...	.....	40 ...	312
2 ...	2	41 ...	312
3 ...	4, 266	42 ...	313
4 ...	334	43 ...	313
5 ...	335	44 ...	314
6 ...	5	45 ...	315
7 ...	226	46 ...	318
8 ...	226	47 ...	277, 278
9 ...	227	48 ...	279
10 ...	227	49 ...	276
11 ...	228	50 ...	316
12 ...	229	51 ...	317
13 ...	210, 548	52 ...	.....
14 ...	273, 403	53 ...	277
15 ...	231	54 ...	278
16 ...	230	55 ...	279
17 ...	233	56 ...	279
18 ...	234	57 ...	278
19 ...	235	58 ...	280
20 ...	236	59 ...	286
21 ...	237	60 ...	287
22 ...	238	61 ...	342
23 ...	239	62 ...	289, 290
24 ...	225	63 ...	292
25 ...	534	64 ...	293
26 ...	220	65 ...	296
27 ...	236	66 ...	344
28 ...	271	67 ...	295
29 ...	271	68 ...	365
30 ...	272	69 ...	294
31 ...	340	70 ...	543
32 ...	267	71 ...	509
33 ...	274, 276	72 ...	510
34 ...	272	73 ...	.....
35 ...	451	74 ...	512
36 ...	452	75 ...	288
37 ...	452	76 ...	503, 504, 505,
38 ...	276		507
39 ...	311	77 ...	338

Act X. of 1875.		Act X. of 1882.	Act X. of 1875.		Act X. of 1882.
78	...	339	116	...	544
79	...	.....	117	...	403
80	...	540	118	...	211
81	...	90	119	...	511
82	...	87	120	...	465
83	...	89	121	...	466
84	...	90	122	...	467
85	...	291	123	...	468
86	...	94	124	...	470
87	...	96	125	...	471
88	...	104	126	...	473
89	...	485	127	...	472
90	...	297	128	...	474
91	...	298	129	...	475
92	...	300	130	...	341
93	...	299	131	...	196
94	...	301	132	...	197
95	...	303	133	...	195
96	...	302	134	...	195
97	...	305	135	...	476
98	...	305	136	...	498
99	...	283	137	...	514
100	...	308	138	...	514, 516
101	...	434	139	...	513
102	...	240	140	...	106
103	...	384	141	...	106
104	...	384, 385	142	...	522
105	...	386, 387	143	...	1
106	...	545, 546	144	...	.....
107	...	.....	145	...	194
108	...	392, 394, 395	146	...	333
109	...	35	147	...	526
110	...	396	148	...	491
111	...	397	149	...	539
112	...	399	150	...	352
113	...	368	151	...	345
114	...	382	152	...	25
115	...	517	153	...	558

TABLE SHEWING CORRESPONDENCE OF THE SECTION-
NUMBERS OF THE PRESIDENCY MAGISTRATES'
ACT (IV. OF 1877) WITH THOSE OF ACT X. OF 1882.

Act IV. of 1877.	Act X. of 1882.	Act IV. of 1877.	Act X. of 1882.
1	.....	38	196
2	.....	39	197
3	1	40	195
4	.....	41	195
5	342, 558	42	195
6	4	43	195
7	.....	44	476
8	{ 7, 18, 19, 20, 25	45	199
9	18, 20, 21	46	195, 196, 197
10	3	47	68
11	32	48	69
12	33	49	70
13	35	50	73
14	5	51	74
15	64	52	93
16	164	53	90
17	551	54	186
18	177	55	186
19	179	56	75, 77
20	180	57	.....
21	182	58	76
22	181	59	77
23	185	60	79
24	531	61	.....
25	191	62	65
26	.....	63	82
27	204	64	83, 84
28	191	65	85, 86
29	198	66	.....
30	200	67	87
31	537	68	88
32	203	69	89
33	204	70	63, 496
34	90, 204	71	497
35	204	72	499
36	90	73	500
37	205	74	496
		75	501

COMPARATIVE STATEMENT.

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Act IV. of 1877.		Act X. of 1882.	Act IV. of 1877.		Act X. of 1882.
76	...	502	120	...	243, 255
77	...	514	121	...	244, 256
78	...	514	122	...	254, 255
79	...	514	123	...	364
80	...	513	124	...	92, 344
81	...	207	125	...	248
82	...	208	126	...	245, 258, 370
83	...	208, 353	127	...	347
84	...	364	128	...	348
85	...	540	129	...	495
86	...	344	130	...	340
87	...	209	131	...	341
88	...	210	132	...	352
89	...	210, 213, 220	133	...	259, 345
90	...	210	134	...	540
91	...	211, 212, 213,	135	...	90
	...	219, 291	136	...	90
92	...	216	137	...	87, 88
93	...	217	138	...	89
94	...	221	139	...	542
95	...	222	140	...	91
96	...	223	141	...	485
97	...	554	142	...	244
98	...	225	143	...	252, 257
99	...	227	144	...	94
100	...	227	145	...	96
101	...	228	146	...	95
102	...	229	147	...	104
103	...	231	148	...	342
104	...	230	149	...	343
105	...	233	150	...	337
106	...	234	151	...	339
107	...	235	152	...	509
108	...	236	153	...	510
109	...	237	154	...	511
110	...	238	155	...	512
111	...	239	156	...	350
112	...	240	157	...	503
113	...	403	158	...	503
114	...	241, 370	159	...	96
115	...	362	160	...	98
116	...	254	161	...	101
117	...	246, 537	162	...	102
118	...	247, 259	163	...	102
119	...	242	164	...	102

Act IV. of 1877.		Act X. of 1882.		Act IV. of 1877.		Act X. of 1882.	
165	...	103		206	...	246, 482	
166	...	52		207	...	484	
167	...	411, 412		208	...	106	
168	...	417, 427		209	...	106	
169	...	419		210	...	120	
170	...	548		211	...	.....
171	...	420		212	...	109	
172	...	421		213	...	110	
173	...	422		214	...	110	
174	...	423		215	...	107	
175	...	426		216	...	112, 113	
176	...	428		217	...	90, 114	
177	...	537		218	...	116	
178	...	537		219	...	119	
179	...	423		220	...	118	
180	...	404		221	...	123	
181	...	526		222	...	112	
182	...	441		223	...	123	
183	...	383, 390		224	...	120	
184	...	384		225	...	124	
185	...	386, 387, 388, 389, 538		226	...	126	
186	...	535		227	...	121	
187	...	391		228	...	514	
188	...	392		229	...	514	
189	...	394		230	...	511	
190	...	393		231	...	107, 109, 110	
191	...	395		232	...	111	
192	...	396		233	...	522	
193	...	397		234	...	488	
194	...	464		235	...	489	
195	...	469		236	...	490	
196	...	466		237	...	558	
197	...	467		238	...	184	
198	...	468		239	...	184	
199	...	470		240	...	432	
200	...	471		241	...	433	
201	...	473		242	...	250, 563	
202	...	472		243	...	517	
203	...	474		244	...	517, 523, 524	
204	...	475		245	...	544	
205	...	480		246	...	44	
				247	...	42	

THE NEW CODE OF CRIMINAL PROCEDURE.

ACT NO. X. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 6TH MARCH 1882.

An Act to consolidate and amend the law relating to Criminal Procedure

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows :—

Preamble.

PART I.

PRELIMINARY.

CHAPTER I.

1. This Act may be called "The Code of Criminal Procedure, 1882:"

Short title. and shall come into force on the first day of
Commencement. January, 1883;

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed,* by any other law now in force, or shall apply to—

Local extent.

(a) the Commissioners of Police in the towns of Calcutta, Madras, * Act X., 1872, ss. 1, 2, 111, 529, 535, 540, 541.
and Bombay, or the police in the towns of Calcutta and Bombay; Act X., 1875, s. 143.

(b) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively; Act IV., 1877, s. 3.

(c) heads of villages in the Presidency of Fort St. George; or

(d) village police-officers in the Presidency of Bombay: Act V. of 1869.

(e) and nothing in sections 174, 175, and 176, shall apply to the police in the town of Madras. Act X., 1872, s. 540.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed

Repeal of enactments. to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Act X., 1872, s. 2, last para., s. 10. All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules, and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed, and made under the corresponding section of this Code.

Act X., 1872, s. 2, paras. 3, 4. 3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV. of 1861, or Act No. X. of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

References to Code of Criminal Procedure and other repealed enactments. Expressions in former Acts. Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate;" the expression "Magistrate of the district" shall be deemed to mean "District Magistrate;" and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Act IV., 1877, s. 10. Act X., 1872, s. 4. Act IV., 1877, s. 6. 4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—
Interpretation clause.
New. Liv., 501. (a) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a police-officer:

(b) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or police-officer) who is authorized by a Magistrate in this behalf:

"Inquired into" omitted. "Inquiry:" (c) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

Penal Code, s. 198. I.L.R., 1 All. 6. 1 Mad. H. C. Rep., 46. "Judicial proceeding:" (d) "Judicial proceeding" means any proceeding in the course of which evidence is or may be lawfully taken:

(e) "Writing" and "written" include "printing," "lithography," "photography," "engraving," and every other mode in which words or figures can be expressed on paper or on any substance:

New. (f) "Sub-division" means a sub-division made under this Code of a District:

"Sub-division:"

"Province :" (g) "Province" means the territories for New. the time being under the administration of any Local Government :

(h) "Presidency-town" means the local limits, for the time being, of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras, or Bombay :

(i) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb, and the Recorder of Rangoon : Act X., 1875, s. 3, altered. Another definition, *infra*, s. 266.

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area ;

or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf :

"Chief Justice :" (j) "Chief Justice" includes also the senior Judge of a Chief Court : Act X., 1875, s. 3.

(k) "Advocate-General" includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf : Act X., 1875, s. 3. Act X., 1877, s. 539.

(l) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown : Act X., 1875, s. 3.

(m) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor ; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction : New : see Act X., 1872, s. 57. Act X., 1875, s. 3. See 11 Bom. 103.

(n) "Pleader," used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding : Now.

(o) "Police-station" means any post declared, generally or specially, by the Local Government to be a police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf ; and "officer in charge of a police-station" includes, when the officer in charge of the police-station is absent therefrom or unable from illness to perform his duties, the police-officer present at the police-station who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present : Act X., 1872, s. 136.

"Officer in charge of a police-station :" the officer in charge of the police-station is absent therefrom or unable from illness to perform his duties, the police-officer present at the police-station who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present :

"Offence :—" (p) "Offence" means any act or omission made punishable by any law for the time being in force :

Act XI., 1874, s. 1. (q) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, "Cognizable offence :—" within or without the Presidency-towns, may, "Cognizable case :—" in accordance with the second schedule, or under any law for the time being in force, arrest without warrant :

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without the Presidency-towns may not arrest without warrant :

Act XI., 1874, s. 1. (r) "Bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by "Bailable offence :—" any other law for the time being in force ; and "Non-bailable offence." means any other offence : "non-bailable offence"

(s) "Warrant-case" means a case relating to an offence punishable, with death, transportation, or imprisonment for a term exceeding six months :

"Warrant-case :—" (t) "Summons-case" means a case relating to an offence not so punishable :

"Summons-case :—" (u) "European British subject" means—

Act X., 1872, s. 71. (1) any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, Act X., 1875, s. 3. "European British subject :—" or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal ;

(2) any child or grand-child of any such person by legitimate descent :

New. "Chapter" (v) "Chapter" means a chapter of this Code ; and "schedule" means a schedule hereto annexed :

New. "Place." (w) "Place" includes also a house, building tent, and vessel.

Act XI., 1874, s. 2. Words referring to acts, to illegal omissions ; and E.g., "special law," "local law." all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code. Words to have same meaning as in Penal Code.

See Act XI., 1874, s. 42. 5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions herein- Act X., 1872, ss. 6, 7, 11. Trial of offences under and tried according to the provisions herein- Act X., 1872, ss. 6, 7, 8, Penal Code. after contained ; and all offences under any para. 1, 63, other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or expl. Trial of offences against provisions, but subject to any enactment for the time being in force regulating the manner or Act X., 1875, other laws. time being in force regulating the manner or Act IV., 1877, place of inquiring into or trying such offences. s. 14.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any Act X., 1872, ^{ss. 5, 19.} Classes of Criminal law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

I.—Courts of Session :

II.—Courts of Presidency Magistrates :

III.—Courts of Magistrates of the first class :

IV.—Courts of Magistrates of the second class :

V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions ; ^{Act X., 1872, ss. 12.}
and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts. ^{Act XI., 1874, s. 4.}

The Local Government may alter the limits, or, with the previous sanction of the Governor-General in Council, the number, of such Divisions and Districts. ^{Act X., 1872, ss. 13, 38.}

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered. ^{Act X., 1872, s. 14. Act XI., 1874, s. 4.}

Presidency-towns to be deemed Districts. Every Presidency-town shall, for the purposes of this Code, be deemed to be a District. ^{Act IV., 1877, s. 8, para. 5.}

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division. ^{Act X., 1872, s. 39.}

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court. ^{Act X., 1872, ss. 15, 16, 17, 18.}

It may also appoint Additional Sessions Judges, Joint Sessions Judges, and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

Act X., 1872, s. 35. **10.** In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Act X., 1872, s. 55. **11.** Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Act X., 1872, ss. 37, 49. **12.** The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

No order of the local Government under the above section can legally have retrospective effect.—*Macdonald and Macrae v. Reddell*, 16 W. R. 79.

Act X., 1872, s. 40. **13.** The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate. The Local Government may delegate its powers under this section to the District Magistrate.

Act X., 1872, s. 42. **14.** The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second, or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

Act XI., 1874, s. 5. With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending, and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force. Act V., 1861
s. 6.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second, or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit. Act X., 1872,
ss. 50, 224.

Sufferuddin v. Ibrahim, I. L. R., 3 Cal. 754.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class. Act X., 1872,
s. 51.

Powers exercisable by Bench in absence of special direction.

A BENCH of Magistrates has no power to deal with cases coming under s. 530, Act X. of 1872 (s. 145 of this Code). A Bench of Magistrates may be empowered under s. 50, Act X. of 1872 (s. 15 of this Code), "to try such cases or such class of cases only, and within such limits, as the Government may direct." The definition of the term "trial" in s. 4, Act X. of 1872, shows that it refers to trials for offences, and these do not come within the miscellaneous matters mentioned in s. 530, Act X. of 1872 (s. 145 of this Code).—*Sufferuddin v. Ibrahim, I. L. R., 3 Cal. 754.*

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects:— Act X., 1872,
ss. 52, 53.

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;
- (c) the constitution of the Bench for conducting trials;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. All Magistrates appointed under sections 12, 13, and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate. Act X., 1872,
s. 37, para. 2.

Act X., 1872,
s. 41.

Subordination of Magistrates and Benches to District Magistrate:

Subordination of Assistant Sessions Judges to Sessions Judge.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Act X., 1872,
s. 37, para.
2.

Neither the District Magistrate, nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14, and 15, shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Act IV., 1877,
ss. 8, 9.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Act IV., 1877,
s. 8, para. 5.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Act IV., 1877,
s. 8, last
para. ; s. 9,
last para.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

Act IV., 1877,
s. 9.

21. Every Chief Magistrate shall exercise, within the local limits of his jurisdiction, all the powers conferred on him by this Code, or which, by any law or rule in force immediately before this Code comes into force, are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(b) the times and places at which Benches of Magistrates shall sit;

(c) the constitution of such Benches; and

(d) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

Act II., 1869,
s. 3.

22. The Governor-General in Council, so far as regards the whole or any part of British India outside the Presidency-towns, Justices of the Peace for the Mufassal.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the Presidency-towns. **23.** The Governor-General in Council or the Local Government, so far as regards the town of Calcutta, Act II., 1869, s. 4.

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification, any persons resident within British India and not being the subjects of any foreign State whom such Governor-General in Council or Local Government (as the case may be) thinks fit.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns. Act II., 1869, s. 10.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

25. In virtue of their respective offices, the Governor-General, the *Ex-officio* Justices of the Peace, Ordinary Members of the Council of the Governor-General, the Judges of the High Courts, and the Recorder of Rangoon, are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates. 13 Geo. III., c. 63, s. 38. Act X., 1875, s. 152. Act IV., 1877, s. 8. Native High Court Judges are thus Justices of the Peace

F.—Suspension and Removal.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government: Act X., 1872, s. 9.

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only, shall not be suspended or removed from office by any other authority.

27. The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it. Act II., 1869, s. 9.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

E.g., ss. 193, 194. 28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Act X., 1872, s. 4. 29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

Offences under other laws.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: Provided that—

(a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(b) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(c) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year

Act X., 1872, s. 36. 30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

No appeal lies to the High Court from a sentence passed by a Deputy Commissioner which requires the orders of the Sessions Judge until such orders have been passed.—*Sham Soonder Dass*, 25 W. R. 18.

AN officer exercising the powers described in the above section is competent, under the provisions of s. 59, Penal Code, to pass a sentence of transportation for seven years instead of awarding sentence of imprisonment.—*In re Boodhoo*, 9 W. R. 6 (F. B.); B. L. R., Sup. Vol., 869.

QUERE whether, where a person has been convicted by a Deputy Commissioner under s. 36, Act X. of 1872 (s. 30 of this Code), and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to whom such Deputy Commissioner is subordinate, and such sentence has been confirmed accordingly, an appeal lies to the High Court against such conviction and sentence.—*Empress v. Nadua*, I. L. R., 2 All. 53.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

Act X., 1872, ss. 15, (para. 2), 17. A Sessions Judge, Additional Sessions Judge, or Joint Sessions Judge, may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. Act X., 1872, s. 18.

WHEREAN Assistant Judge, under s. 314, Act X. of 1872 (s. 35 of this Code), simultaneously passed three sentences, each of three years' imprisonment, the High Court held that they must be considered as one sentence for purposes of appeal or confirmation, and therefore the Court would not admit the appeal, but referred the case to the Sessions Judge for his order.—*Rama Blivgowda*, 1 L. R., 1 Bom. 223.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely :— Act X., 1872, s. 20.

- | | | | | | | |
|--|---|---|---|---|---|-----------------------|
| (a) Courts of Presidency Magistrates and of Magistrates of the first class : | { | Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law ; | { | Fine not exceeding one thousand rupees ;
Whipping. | { | Act IV., 1877, s. 11. |
| (b) Courts of Magistrates of the second class : | { | Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ; | { | Fine not exceeding two hundred rupees ;
Whipping. | { | |
| (c) Courts of Magistrates of the third class. | { | Imprisonment for a term not exceeding one month ;
Fine not exceeding fifty rupees. | { | | { | |

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

THERE is not the same offence as dishonestly receiving stolen property ; and therefore whipping cannot be added as a punishment for the latter offence in the case of a person previously twice punished for the former offence.—*Empress v. Pratab*, 1 L. R., 1 All. 666.

A SENTENCE of whipping passed on a person who is already under sentence of death or transportation, or penal servitude, or imprisonment for more than five years, is illegal. If the sentence of whipping precede, instead of follow, the other sentence, the passing of the latter sentence renders the infliction of whipping illegal.—*Mad. II. C. Pro.*, April 19, 1876 ; 1 L. R., 1 Mad. 56.

WHEN any special or local law gives a Magistrate powers to pass a higher sentence than is granted under s. 20, Act X. of 1872 (s. 32 of this Code), he is not restricted by either this section or the concluding clause of s. 8, para. 1 (ss. 5 and 29, cl. 1, of this Code). The said concluding clause provides only for those offences respecting which a local or special law has not clearly laid down within whose jurisdiction they lie.—*Suroop Chunder Dutt*, 7 S. W. R. 29.

Act X., 1872, s. 20, Expl., s. 309, para. 2. **33.** The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code:

Act X., 1872, s. 309, para. 1, proviso. Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

As to para. 1 cases. of that section see Act I. of 1868. Act IV., 1877, s. 12, omitting paras. 1 & 3. The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Act X., 1872, s. 20, Expl. to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

A SUBORDINATE Magistrate of the first class has no power under s. 45, Criminal Procedure Code (s. 346 of this Code), to award any greater sentence of imprisonment in default of payment of fine than six weeks in the case of persons convicted of being members of an unlawful assembly.—*Phoolman Tewary v. Satram Ojha* and others, 6 W. R. 51.

S. 309, Act X. of 1872 (s. 33 of this Code), does not extend the period of imprisonment which may be awarded by a Magistrate under s. 65, Penal Code, but only regulates the proceedings of Magistrates whose powers are limited.—*Empress v. Darba* and others, 1 L. R., 1 All. 461 (F. B.). But see *Reg. v. Muhammad Saib*, 1 L. R., 1 Mad. 277 (F. B.), *infra*.

A PRISONER was sentenced to imprisonment and fine, and, in default of payment of the fine, to a further term of imprisonment. He paid a part of the fine, but, that fact not having been communicated to the jailor, underwent the entire further term of imprisonment. *Held* that the Court had no power to order the fine to be refunded.—*Reg. v. Natha Mula*, 4 Bom. II. C. Rep., Cr. Ca., 37.

THE accused were sentenced by the Presidency Magistrate, under ss. 58 and 74 of the Bengal Excise Act, to a fine of Rs. 200 each, in default to three months' imprisonment, and in addition to six months' imprisonment, which was the maximum term that could be awarded under s. 74. *Held* that the sentence of imprisonment was not in excess of the powers given to the Magistrate by s. 12 of the Presidency Magistrates' Act (s. 33 of this Code), the imposition of the additional sentence of imprisonment not affecting the Magistrate's powers as regarded the original sentence under s. 58, Bengal Excise Act.—*Ram Chunder Shaw and others v. The Empress*, 1 L. R., 6 Cal. 575.

PRISONERS were convicted of an offence punishable under s. 160, Penal Code, and were sentenced to pay a fine of Rs. 25 each, or, in default, to be rigorously imprisoned for 30 days, the full term of imprisonment under the section. *Held* that, having regard to s. 309, Act X. of 1872 (s. 33 of this Code), the sentence was legal. In so holding, the High Court made the following remarks: "If imprisonment and fine, and further imprisonment in default of payment of fine, is the sentence, the imprisonment in default cannot exceed one-fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence; but if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence."—*Reg. v. Muhammad Saib*, 1 L. R., 1 Mad. 277 (F. B.). But see *Empress v. Darba*, 1 L. R., 1 All. 461 (F. B.).

Act X., 1872, s. 36. **34.** The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, Higher powers of certain District Magistrates.

including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge. See *infra*, s. 380.

WHERE a Deputy Commissioner's order requires the sanction of the Sessions Judge, the High Court has no jurisdiction to entertain an appeal from it until so sanctioned.—*Reg. v. Sham Soonder Dass*, 25 W. R. 18.

S. 36, Act X. of 1872 (s. 34 of this Code), as regards the necessity for confirmation of the sentence by the Sessions Judge, refers to cases in which the sentence of imprisonment is a sentence of upwards of three years, without including any additional sentence as to fine or whipping.—*In re Shumsher Khan*, I. L. R., 6 Cal. 624.

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct. Act X., 1872, s. 314.
Act X., 1877, s. 109.
Act IV., 1877, s. 13.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

THE last clause of s. 35 is new, and is based on the ruling of the Bombay High Court in the case of *Reg. v. Rama Bhivgowda*, I. L. R., 1 Bom. 223.

THERE is no right of appeal because the united sentences in three separate cases amount to more than a month's imprisonment.—*Reg. v. Morly Sheikh*, 6 W. R. 51.

A CONVICTION under the Indian Penal Code and also under a special law, in respect of one and the same offence, is illegal.—*Reg. v. Husson Ali*, 5 N. W. P. 49.

It is illegal to pass a separate sentence for having possession of forged documents under s. 474, Penal Code, and also for using them under s. 471.—*Reg. v. Nuzur Ali*, 6 N. W. P. 39.

WHEN more than one offence is proved, it is not proper to convict only of one, and acquit of the other, although the offences may be cognate.—*Reg. v. Murar Trikam*, 5 Bom. H. C. Rep. 3.

WHERE a prisoner is convicted of two or more offences forming parts of one continuous transaction, he can only be sentenced for the principal offence.—*Mad. H. C. Pro.*, Oct. 17, 1862, and March 30, 1863.

WHERE the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two sentences of theft.—*Reg. v. Sheikh Monceah*, 11 W. R. 31.

IF a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence.—Reference in the case of *Goolzar Khan*, 9 W. R. 30.

WHERE the accused rescued a prisoner from the lawful custody of a police-officer, and also used criminal force to deter another police-officer from discharging his duty, and was convicted and sentenced under s. 225 and s. 353, Penal Code, the separate convictions and sentences were upheld.—*Reg. v. Assan Shurreef and others*, 13 W. R. 75.

IT was an irregularity on the part of the Assistant Sessions Judge not to pass a separate sentence under each independent head of charge; but it was not an error or defect in consequence of which the High Court could reverse or alter the sentence under s. 426, Act X. of 1872 (s. 466 of this Code).—*Reg. v. Vinayak Trimbak*, 2 Bom. H. C. Rep. 391.

WHERE substantially only one offence has been committed, and the acts which are the basis of a prisoner's conviction on one charge are the same as the acts which are the basis of his conviction in another charge, cumulative sentences upon each charge should not be passed.—*Reg. v. Radbakanth Paul and Rambachary Dass Mohunt*, 9 W. R. 12.

WHERE substantially only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences, and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.—*Reg. v. Chunder Kant Lahoree and others*, 12 W. R. 2; 3 B. L. R. 14.

WHERE the sentences passed on an accused by a Magistrate are awarded for separate offences committed on different occasions, there is no appeal to the Sessions Judge by reason of the two sentences, each of which was within a limit of one month, having been passed at the same time, and being together in excess of that limit.—*In re Nuggurdi Paramanick*, 10 W. R. 3; 1 B. L. R. 3.

A SENTENCE of transportation cannot be less than seven years. To bring s. 59, Penal Code, into operation, the punishment awarded in each offence alone must not be less than seven years' imprisonment. A general sentence of transportation for two or more offences, when only one of the punishment awarded is seven years' imprisonment, is illegal.—*Reg. v. Sonaoollah and Adoo*, 5 W. R. 44.

A PARTY A, who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A was charged with having misappropriated, was held to be guilty of separate offences under ss. 353 and 183, Penal Code, and the infliction of separate offences for each offence was not prevented by s. 71 of that Code.—*Reg. v. Joyah Mohun Chunder*, 14 W. R. 19.

WHERE a prisoner was convicted and sentenced under s. 50, Act XVII. of 1850, upon the charge of fraudulently secreting a post-letter, and on appeal such conviction and sentence were confirmed, it was held that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion, both acts being connected, and substantially a part of one criminal transaction.—*Reg. v. Dalapati Rao*, 1 Mad. H. C. Rep. 83.

WHERE prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire-arms were used, it is wrong to pass a cumulative sentence and to punish the prisoner both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences.—*Reg. v. Durzoolla and others*, 9 W. R. 33.

WHERE prisoners were convicted under s. 224 for escape, s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force in so doing, and sentenced to separate punishments under each section, it was held that the prisoners had only done one act, and were guilty of only one offence, and should have been found guilty under ss. 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly.—*Reg. v. Kalisankar Sandyal*, 3 B. L. R. 14 ; 12 W. R. 2.

WHERE several seals of different description were found in the possession of the accused with intent to commit forgery, it was held that under s. 473, Penal Code, there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals were in their possession for the purpose of committing one particular forgery.—*Reg. v. Goluck Chunder and Teloko Chunder*, 13 W. R. 16.

WHEN a person who has not been "previously convicted" (*vide* s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others ; but it is not illegal to sentence him to one whipping in lieu of all other punishments. When a person who has been "previously convicted" at one time of two or more offences, he may be punished with one (but only one) whipping, in addition to any other punishment to which he may be liable.—*Nassir v. Chunder and others*, 9 W. R. 41 ; B. L. R., Sup. Vol., 951 (F. B.). See also *Ruttun Bewa v. Buhur* ; *Jhowla v. Buhur*, 14 W. R. 7.

WHERE anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided. Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.—Penal Code, s. 71.

WHERE a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict. A person accused of theft on the 1st August, and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class, at the same time, for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. *Held* that the joinder of the charges was regular under s. 453, Act X. of 1872 (s. 234 of this Code), and the punishment was within the limits presented by s. 314, Act X. of 1872 (s. 35 of this Code).—*In re Daulatia* and another, 1 L. R., 2 All. 305 (F. B.).

Two convictions of entirely different offences being committed by the same individual on different dates and in different places, the punishments awarded necessarily form separate and distinct sentences ; and if each is within limit of one month, and cases have been tried by a Magistrate with full powers, no appeal lies. Separate sentences for separate offences, but at one time, cannot be lumped together to give an appeal. There is nothing in this section to bear out the construction that any number of different penalties imposed for different offences tried at the same time make only one sentence ; on the contrary, the Court convicting a prisoner of several offences is bound to sentence such prisoner to the several penalties prescribed by law, the one penalty commencing after the expiry of the other ; and the only limit (under a certain proviso) is the extent of punishment which the particular Court before which the cases are tried is competent to inflict. The object of this section is to award a specific punishment for each particular offence of which the accused may be proved guilty when all the charges are tried against him together, so that in case some one or other of the charges break down on appeal, the amount of punishment to be remitted may be known.—6 R. C. C. R. 2, dated July 3, 1868.

C.—Ordinary and Additional Powers.

Act X., 1872,
ss. 22, 24,
26, 28, 30. **36.** All District Magistrates, Sub-divisional Magistrates, and Magistrates of the first, second, and third classes, have Ordinary powers of the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Act X., 1872,
ss. 23, 25,
27, 29. **37.** In addition to his ordinary powers, any Sub-divisional Magistrate, or any Magistrate of the first, second, or third class, may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

38. The power conferred on the District Magistrate by section 37, shall be exercised subject to the control of the Control of District Magistrates' investing power. Local Government.

D.—Conferment, Continuance, and Cancellation of Powers.

Act X., 1872,
s. 43. **39.** In conferring powers under this Code, the Local Government may, by order, empower persons specially by Mode of conferring powers. name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

Act X., 1872,
s. 56. **40.** Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

THE alteration in s. 40 consists in the addition of the words "throughout any local area." This alteration has been necessitated by the following ruling: The petitioner had been convicted by Mr. Carnegie, the Assistant Commissioner of Kámrup, in the exercise of summary jurisdiction under s. 22 of Act X. of 1872 (s. 36 of this Code). This officer was, in 1872, in charge of the Jorehát Division in the District of Sibságar, "with first-class powers and powers under s. 222 of that Act (s. 260 of this Code). In 1872 he proceeded on furlough to England, and, on his return in 1875, was posted to the District of Kámrup, and invested with the powers of a Magistrate of the first class. Held that s. 56 of Act X. of 1872 (s. 40 of this Code) did not apply, and that Mr. Carnegie had no summary jurisdiction in Kámrup.—*In re Pursooram Burooah*, 1 L. R., 2 Cal. 117; 25 W. R. 52.

M was appointed by the local Government a Magistrate of the first class, under the designation of Joint Magistrate, in the district of Meerut. He was subsequently appointed to officiate as Magistrate of the district of Meerut during the absence of F or until further orders. While so officiating, he was appointed by a Government Notification, dated the 10th July 1880, to officiate as Magistrate and Collector of Gorakhpur "on being relieved by F." He was relieved by F in the forenoon of the 2nd July 1880; and in the afternoon of that day, under the verbal order of F, he proceeded to complete a criminal case which he had commenced to try while officiating as Magistrate of the district of Meerut. All the evidence in this case had

been recorded, and it only remained to pass judgment. M accordingly passed judgment in this case, and sentenced the accused persons to various terms of imprisonment. *Held* (Spankie, J., dissenting) that M retained his jurisdiction in the district of Meerut so long as he stood appointed by the Government to that district, and no longer; and the effect of the order of the 10th July 1880 was to transfer him from the district of Meerut from the moment he was relieved by F of the office of Magistrate of that district, and from that moment he no longer stood appointed to that district, and could exercise no jurisdiction therein as a Magistrate of the first class, and that therefore the convictions of such accused persons had been properly quashed on the ground that M had no jurisdiction.—*Empress v. Anand Sarup*, I. L. R., 3 All. 563.

41. The Local Government may withdraw any powers conferred Act X., 1872,
s. 54.
 Powers may be cancel- under this Code on any person by it or by any
 led, officer subordinate to it.

PART III. GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or police-officer Act X., 1872,
s. 91.
 Public when to assist reasonably demanding his aid, whether within
 Magistrates and police. or without the Presidency-towns, Act IV., 1877,
s. 247.

(a) in the taking of any other person whom such Magistrate or police-officer is authorized to arrest;

(b) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph, or public property; or

(c) in the suppression of a riot or an affray.

A MAGISTRATE directed a landholder "to find a clue" in a case of theft "within 15 days, and to assist the police." *Held* that such order was not authorized by ss. 90 and 91 of Act X. of 1872 (ss. 45 and 42 of this Code), and the conviction of such landholder, under ss. 187 and 188 of the Penal Code, for disobedience to such order, was not maintainable.—*Empress v. Bakshi Ram and others*, I. L. R., 3 All. 201.

INTENTIONAL omission to assist a public servant in the execution of his duty is punishable under s. 187 of the Penal Code. That section runs as follows: "Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

Act X., 1872, **43.** When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.
s. 163. Aid to person other than police-officer executing warrant.

Act X., 1872, **44.** Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 440, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable cause, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.
s. 89. Public to give information of certain offences.
Act IV., 1877, **s. 246.**

The following are the offences alluded to in s. 44 :—

Offences against the State.

S. 121. Waging or attempting to wage war, or abetting the waging of war, against the Queen.

S. 121A. Conspiring to commit certain offences against the State.

S. 122. Collecting arms, &c., with the intention of waging war against the Queen.

S. 123. Concealing with intent to facilitate a design to wage war.

S. 124. Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

S. 124A. Exciting, or attempting to excite, disaffection.

S. 125. Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.

S. 126. Committing depredation on the territories of any Power in alliance or at peace with the Queen.

S. 130. Aiding escape of, rescuing or harbouring, State prisoner or prisoner of war, or offering any resistance to the recapture of such prisoner.

Offences affecting the human body.

S. 302. Murder.

S. 303. Murder by a person under sentence of transportation for life.

S. 304. Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.

Offences against property.

S. 382. Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.

S. 392. Robbery.

S. 393. Attempt to commit robbery.

S. 394. Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.

S. 395. Dacoity.

S. 396. Murder in dacoity.

S. 397. Robbery or dacoity, with attempt to cause death or grievous hurt.

S. 398. Attempt to commit robbery or dacoity when armed with deadly weapon.

S. 399. Making preparation to commit dacoity.

S. 402. Being one of five or more persons assembled for the purpose of committing dacoity.

S. 435. Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.

S. 436. Mischief by fire or explosive substance with intent to destroy a house, &c.

S. 449. House-trespass in order to the commission of an offence punishable with death.

S. 450. House-trespass in order to the commission of an offence punishable with transportation for life.

S. 456. Lurking house-trespass or house-breaking by night.

S. 457. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

S. 458. Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.

S. 459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

S. 460. Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.

45. Every village-headman, village-watchman, village-police-officer, Act X., 1872, s. 90.

Village-headmen, land-owners or occupiers of land, and the agent of any holders, and others bound such owner or occupier, and every officer employed to report certain matters. employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict, or proclaimed offender;

(c) the commission of or intention to commit any non-bailable offence in or near such village;

(d) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

EXPLANATION.—In this section “village” includes village-lands.

A KHAZANCHI is not an agent within the meaning of this section. A dewan may be an agent if his master is absent; but this section does not apply to a dewan who is acting only under the orders of his resident master.—*Empress v. Achiraj Lall*, I. L. R., 4 Cal. 603.

THE provisions of this section should not be put in force against one who has omitted to give information to the police of an offence having been committed in cases where the police have actually obtained such information from other sources.—*Empress v. Sashi Bhusan Chuckerbutty*, I. L. R., 4 Cal. 624.

WHERE a village-accountant and a village-munsif's peon had been convicted, under s. 217, Penal Code, of having disobeyed the direction of law contained in Act X. of 1872, s. 90 (s. 45 of this Code), it was held that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section.—In the matter of *Raminibi Nayar*, Petitioner, I. L. R., 1 Mad. 266.

IN a case in which the accused are charged with having omitted to give information which they were legally bound to give under the above section, it should appear what the offence is as to the commission of which the accused wilfully omitted to give information; that the specified offence was in fact committed by some one; and that the accused knew of its having been committed.—*Reg. v. Ahmed Ali and others*, 22 W. R. 42.

THE duty imposed upon village-headmen, &c., of giving information as to the occurrence of any sudden or unnatural death, is intended to apply only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, &c. Residence in a dwelling-house belonging to another is not occupation of land within the meaning of the section. The liability of the resident agent of an owner under the section arises when the owner is not resident, and has no personal knowledge of the fact required to be reported. Where the owner has such knowledge, the liability attaches to him.—*In re Modhu Soodun Chuckerbutty*, 23 W. R. 60.

THE Criminal Tribes' Act (XXVII. of 1871), s. 21, imposes further duties on village-headmen, &c. The section runs as follows: "It shall be the duty of every village-headman and village-watchman in a village in which any persons belonging to a tribe, class, or gang which has been declared criminal reside, and of every owner or occupier of land on which any such persons reside, to give the earliest information in his power at the nearest police-station of (1) the failure of any such person to appear and give information as directed in section eight; (2) the departure of any such person from such village or from such land (as the case may be). And it shall be the duty of every village-headman and village-watchman in a village, and of every owner or occupier of land, to give the earliest information in his power at the nearest police-station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class, or gang." A breach of the above duties is punishable under s. 176 of the Penal Code.

CHAPTER V

OF ARREST, ESCAPE, AND RETAKING.

A.—Arrest generally.

- Act X., 1872, s. 177.** **46.** In making an arrest, the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
- Act X., 1872, s. 178, adding words as to attempt arrest, to evade.** If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.
- Alison's Cr. Law cited. Mayne P. C., s. 106.** Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.
- Act X., 1872, ss. 99, 179.** **47.** If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place, shall, on demand of such person acting as aforesaid, or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
- Act X., 1872, s. 100.** **48.** If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer, to enter such place and search therein, and

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance: Act X., 1872, s. 180.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it, Act X., 1872, s. 181, which applies only where person to be arrested is accused of an offence for which a warrant may issue.

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein. New.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape. Act X., 1872, s. 182.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, Act X., 1872, s. 387, para. 1. See section 523, *infra*.

the officer making the arrest, or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency. Act X., 1872, s. 386. Act IV., 1877, s. 166.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested. New. Liv., p. 50.

B.—Arrest without Warrant.

54. Any police-officer may, without an order from a Magistrate, and without a warrant, arrest— Act X., 1872, s. 92, omitting cl. 3.

first—any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;

thirdly—any person who has been proclaimed as an offender either
 Cf. Living-
 ston, 503. under this Code or by order of the Local Government ;

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property, and who may reasonably be suspected of having committed an offence with reference to such thing ;

fifthly—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; and

sixthly—any person reasonably suspected of being a deserter from
 "Or Navy"
 added. Her Majesty's Army or Navy.

This section applies to the police in the towns of Calcutta and Bombay.

THE police may, without any formal complaint, apprehend any person found with stolen property.—Reg. v. Gowree Singh, 8 W. R. 28.

A CHAUKIDAR, or village-watchman, is not legally bound, as a public servant, to apprehend a person accused of committing murder outside the village of which he is chaukidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder, and consequently such chaukidar, if he refuses to apprehend such person on such charge at the instance of a private person, is not punishable under s. 221 of the Penal Code.—*Enpress v. Kallu* and another, 1. L. R., 3 All. 60.

IN the case of a police-officer charged under s. 342 (wrongful confinement), where there was no malice, no intention of doing an act of the nature spoken of in s. 339 (wrongful restraint), or s. 340 (wrongful confinement), and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police-officer, the facts were held not to amount to the criminal offence of wrongful restraint. In this case a sub-inspector detained a complainant while he went to consult his superior officer whether a recognizance should be taken. The High Court thought that though the confinement was unjustifiable, yet as there was proof of *bona fides*, no offence was committed, though the sub-inspector exceeded his authority.—*In re Budrool Hossein*, Sub-Inspector, Petitioner, 24 W. R. 51.

POLICE-OFFICERS would do well to bear in mind the following remarks of the High Court : " If, as is frequently the case, a police-officer, without arresting a person himself, directs some of the neighbours to take charge of him, the police-officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody. Even if a person be rightly arrested, it does not rest with the discretion of the police-officer to keep the prisoner in custody where and as long as he pleases. Under no circumstances can he be detained (without the special order of a Magistrate) more than 24 hours. At the expiration of 24 hours, unless the special order has been obtained, the prisoner must either be discharged or sent in to the Magistrate, and any longer detention is absolutely unlawful ; and though the Code is not so express upon the place as the time of confinement, still we think it is perfectly clear that it was intended that where a police-officer had arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the police-station, and there kept in the custody of the officer in charge of the station, who is the person entrusted by the Act with the conduct of the inquiry."—Reg. v. Behary Singh and others, 7 W. R. 3.

Arrest of vagabonds,
habitual robbers, &c.

55. Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested— **Act X., 1872, s. 94.**

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

It will be seen that, under s. 54, any police-officer may arrest; while under s. 55 an officer in charge of a station may arrest, or may depute (under s. 56) any of his subordinates to arrest.

56. When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made. **Act X., 1872, s. 102, para. 1.**

Procedure when police-officer deputes subordinate to arrest without warrant.

WHERE a subordinate police-officer made an arrest for dacoity in the presence and at the verbal request of his superior (a head-constable), it was held that the arrest, though not made in consequence of any order in writing, was legal, it being understood that the arrest was virtually made by the superior officer.—*Reg. v. Sheikh Emoo* and *Reg. v. Sagur Bewah*, 11 W. R. 20.

57. When any person in the presence of a police-officer commits or is accused of committing a non-cognizable offence, and refuses, on demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required. **Act X., 1872, s. 93.**

Refusal to give name and residence.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India. **Act X., 1872, s. 103.**

Pursuit of offenders into other jurisdictions.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender; **Act X., 1872, s. 105.**

Arrest by private persons.

Act X., 1872, s. 107. and shall, without unnecessary delay, make over any person so arrested to a police-officer; or, in the absence of a police-officer, take such person to the nearest police-station.

N. Y. Crim. Proc. Code, 184. rest.

If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Act X., 1872, s. 101. 60. A police-officer making an arrest without warrant shall, without unnecessary delay, and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

Person arrested to be taken before Magistrate or officer in charge of police-station.

Act X., 1872, s. 124, para. 1. 61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than 24 hours.

THIS section does not apply to cases in which there has not been a continuous detention of 24 hours.—*In re Indrobee Thaba*, 1 W. R. 5.

A POLICE-OFFICER detaining a man without reason for an hour, when he could bring him before a Magistrate at once, is wrongfully confining him.—2 Rev. Crim. and Civ. Reg. 70, Dec. 10, 1866.

IN no case is a police-officer justified in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case.—*Reg. v. Suprosunno Ghosail*, 6 W. R. 88.

POLICE-OFFICERS would do well to bear in mind the following remarks of the High Court: "If, as is frequently the case, a police-officer, without arresting a person himself, directs some of the neighbours to take charge of him, the police-officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody. Even if a person be rightly arrested, it does not rest with the discretion of the police-officer to keep the prisoner in custody where and as long as he pleases. Under no circumstances can he be detained (without the special order of a Magistrate) more than 24 hours. At the expiration of 24 hours, unless the special order has been obtained, the prisoner must either be discharged or sent in to the Magistrate, and any longer detention is absolutely unlawful; and though the Code is not so express upon the place as the time of confinement, still we think it is perfectly clear that it was intended that where a police-officer had arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select but that he should, if possible, be sent immediately to the police-station, and there kept in the custody of the officer in charge of the station, who is the person entrusted by the Act with the conduct of the enquiry."—*Reg. v. Behary Singh and others*, 7 W. R. 3.

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

67. The provisions of sections 47, 48, and 49, shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant, and is not a police-officer having authority to arrest.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Such summons shall be served by a police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the police in the towns of Calcutta and Bombay.

WHERE a summons did not specify a place at which the party summoned was required to attend, it was held that non-compliance with the summons was no offence.—*Mad. H. C. Pro.*, Nov. 30, 1874; *Weir*, p. 41.

69. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Every person on whom a summons is so served shall, if so required

Signature of receipt for summons. by the serving officer, sign a receipt therefor on the back of the other duplicate.

THE mere showing to a witness of a summons is not sufficient service. Either the original should be left with the witness, or should be exhibited to him, and a copy of it delivered or tendered.—*Reg. v. Karsanlal Danatram*, 5 Bom. II. C. Rep., Cr. Ca., 20.

Act X., 1872,
s. 154.

Act IV., 1877,
s. 49.

70. Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Act X., 1872,
s. 155.

71. If the signature mentioned in sections 69 and 70 cannot, by the exercise of due diligence, be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Act X., 1872,
s. 158, proviso.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Act XXIII.,
1840, s. 1.

Act IV., 1877,
s. 50.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Act IV., 1877,
s. 51.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

Act X., 1872,
s. 159,
amended.

Act IV., 1877,
s. 56, which
does not re-
quire the
seal.

B.—Warrant of Arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates by any member of such Bench; and shall bear the seal of the Court.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest. But see 9, Bom., 157.

WHERE the warrant is issued for the arrest of a European British subject by a Magistrate not competent to enquire into or try the case, it should be made returnable before a Magistrate who is competent to do so.—See s. 445, *infra*.

A WARRANT for the arrest of a person on a charge of abduction should state the intent with which the offence was committed. Before a Magistrate issues a warrant, he must satisfy himself by evidence that an offence has been committed. A warrant was set aside as bad, where there was not sufficient evidence of the commission of an offence, as the criminal acts charged did not amount to an offence without a certain specified intention, and that intention was not mentioned in the warrant.—*Bidhumukhi Debi*, 6 B. L. R., App., 129.

A WARRANT issued under this section should be sealed, should describe the person to be apprehended under it with reasonable particularity so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a warrant was defective in all the above particulars, the High Court ordered the release of the prisoner apprehended under it. In doing so, the Court (Sargent, J.) made the following remarks, which are deserving of attention: "I think I am bound to follow the principle involved in the ruling of the Courts of England in *Hood's case* (1 Moore's Cr. Ca. 281), which is that a warrant shall contain a distinct and unequivocal intimation to the person that he is the individual in Court to be apprehended, and must surrender to the officers, and this too the more especially as the form of warrant provided in the Code requires that his residence should be inserted. The issuing of general warrants is, it is well known, illegal; and this, though not, properly speaking, a general warrant, which means a warrant to apprehend all persons committing a particular offence or class of offences, is, however, of such a general nature as to justify the police in arresting any person of the name of *James Hastings*, whoever he may be, or wherever he may be found, the number of persons to be arrested under it being limited only by the limit to the number of persons bearing that name. The warrant in this case is, in my opinion, far more general than was the warrant in *Hood's case*, and I am therefore of opinion that it is bad."—*In re James Hastings*, 9 Bom. II. C. Rep. 154.

76. Any Court issuing a warrant for the arrest of any person may in its discretion, direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time, and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

Act X., 1872, s. 160.
Act IV., 1877, s. 58.

The endorsement shall state (a) the number of sureties, (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (c) the time at which he is to attend before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Recognizance to be forwarded.

77. A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution

Warrants to whom directed.

Act X., 1872, s. 161.
Act IV., 1877, s. 56.

is necessary, and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Act X., 1872, When a warrant is directed to more officers or persons than one, it
s. 164.
Act IV., 1877, Warrant to several per- may be executed by all, or by any one or more
s. 59. sons. of them.

UNDER this section a Magistrate may issue a warrant to an unofficial person, but he can only do so when he cannot obtain the assistance of the police, or when the urgency is imminent.—Queen on the prosecution of Nobin Roy v. Surendro Nath Roy and others, 13 W. R. 27; 5 B. L. R. 274.

Act X., 1872, 78. A District Magistrate or Sub-divisional Magistrate may direct
s. 162. Warrant may be directed a warrant to any landholder, farmer, or manager to landholders, &c. of land within his district or sub-division for

the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer, or manager, shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

WHERE a person against whom a proclamation has been issued neglects to attend, he is punishable under s. 174, Penal Code.

THE wilful neglect by a landholder or other person above mentioned to execute such a warrant directed to him is punishable under the latter part of s. 187, Penal Code, with simple imprisonment for six months, or fine of five hundred rupees, or both.

UNDER this section the District Magistrate can direct a warrant or warrants to landholders, &c., for the arrest of any proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.—Ram Kishore Sen, 19 W. R. 12; 10 B. L. R. 14.

Act X., 1872, 79. A warrant directed to any police-officer may also be executed
s. 165. Warrant directed to by any other police-officer whose name is en-
Act IV., 1877, police-officer. dorsed upon the warrant by the officer to whom
s. 60. it is directed or endorsed.

Act X., 1872, 80. The police-officer or other person executing a warrant of arrest
s. 176. Notification of substance shall notify the substance thereof to the person
of warrant. to be arrested, and, if so required, shall show him the warrant.

Act X., 1872, 81. The police-officer or other person executing a warrant of arrest
s. 183. Person arrested to be shall (subject to the provisions of section 76 as
brought before Court with- to security), without unnecessary delay, bring
out delay. the person arrested before the Court before
which he is required by law to produce such person.

Act X., 1872, 82. A warrant of arrest may be executed
s. 167. Where warrant may be
Act IV., 1877, executed. at any place in British India.
s. 63.

83. When a warrant is to be executed outside the local limits of Act X., 1872,

Warrant forwarded to the jurisdiction of the Court issuing the same, ss. 168, paras. 1 & 2, 170, first para.
 Magistrate for execution outside jurisdiction. such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed. Act IV., 1877, s. 64.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

84. When a warrant directed to a police-officer is to be executed Act X., 1872,

Warrant directed to beyond the local limits of the jurisdiction of ss. 168, paras. 1 & 3, 170, first part.
 police-officer for execution outside jurisdiction. the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed. Act IV., 1877, s. 64, paras. 5, 6, 7.

Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

85. When a warrant of arrest is executed outside the district in Act X., 1872,

Procedure on arrest of which it was issued, the person arrested shall, s. 169.
 person against whom unless the Court which issued the warrant is Act IV., 1877, s. 65, para. 1.
 warrant issued. within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

86. Such Magistrate or Commissioner shall, if the person arrested Act X., 1872,

Procedure by Magistrate appears to be the person intended by the Court s. 170.
 before whom person arrested is brought. which issued the warrant, direct his removal in Act IV., 1877, s. 65, para. 2.
 custody to such Court: Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant, and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

Act X., 1872, ss. 171, 353, para. 1. Proclamation for person absconding. 87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

Act IV., 1877, ss. 67, 137, 10 Ben. App. 18.

The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

New as to day of publication.

A statement by the Court issuing the proclamation, to the effect that the proclamation was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Act X., 1872, ss. 172, 353, paras. 2, 3. Act IV., 1877, ss. 68, 137.

88. The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate; and in all other cases—

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

The powers, duties, and liabilities of a receiver appointed under this section, shall be the same as those of a receiver appointed under Chapter XXXVI. of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

THIS section makes no provision for any investigation by a Magistrate of the claims of third persons to property which has been attached. The claimants are not barred by the sale, and may bring a suit in the Civil Court against the purchasers to establish their rights.—*Reg. v. Chunroo Roy*, 7 W. R. 35 (F. B.).

BEFORE the passing of an order declaring the property of an accused person who cannot be found to be at the disposal of the Government, there must be a proclamation specifying a time within which such person is required to appear. But, before a Magistrate can issue such a proclamation, he must be satisfied that such person has absconded or is concealing himself for the purpose of avoiding the service of the warrant.—*Sheodyal Sing v. Griban Singh*, 6 W. R. 73.

THE High Court cancelled a previous order made by it (under an error in law caused by a misrepresentation of the facts) directing the restoration of the moveable property of a prisoner which was under attachment, the Court not having been informed at the time that the property in question had, under this section, been declared to be at the disposal of Government. Property so declared to be at the disposal of Government can only be restored by Government.—*Govt. of Bengal v. Meer Surwar Jan*, 18 W. R. 33; 9 B. L. R. 342.

AN order of confiscation, made by a Joint-Magistrate, was set aside, (1) because it was made without permitting the accused to show cause against the confiscation of his goods, (2) because the confiscation ought not to be carried out where the accused has been apprehended and brought to trial before the passing of the order, and (3) because the Joint-Magistrate acted in contravention of the order of the Magistrate releasing the property from attachment.—*Jhundoo Sing and others, Petitioners*, 5 W. R. 8.

PHEAR, J.—I think that, until the Magistrate had judicially found as a fact upon sufficient information that the person against whom the proclamation is to issue had absconded or concealed himself for the purpose of avoiding apprehension under the warrant, he had no authority to issue that proclamation. I am also of opinion that the declaration of forfeiture directed to be made in this section was intended to be in furtherance of a matter of procedure, and not simply as a mode of punishment for contempt of process; and in this view I think that, if it is not made before the person affected by the proclamation has come in or has been brought in, it ought not to be made at all.—In the matter of the Petition of Ram Kishore Sen, 10 B. L. R. 14.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under the last paragraph of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Act X., 1872,
ss. 173, 354.
Act X., 1875,
s. 83.
Act IV., 1877,
ss. 69, 138.

FORFEITURE of property of an absconding offender, who appears within two years from the attachment of his property, should not be carried into effect until after a regular enquiry into the causes of the offender's absence.—*Bissonath Sircar, Petitioner*, 3 W. R. 63.

WHERE a recusant witness does not make his appearance, the Magistrate may sell any part of the attached property and recover the amount of fine imposed on him. The fine is not illegal by reason of the witness's answer to the charge not having been recorded.—*Reg. v. Rhedoy Nath Biswas*, 2 W. R. 44.

WHERE a party against whom a proclamation has been issued surrenders, the Court should ask him whether he absconded or concealed himself, and give him an opportunity of explaining his absence. Where the Court omitted to do this, its proceedings were quashed, and the sale set aside as irregular.—*Sheodyal Sing v. Griban Singh*, 6 W. R. 73.

HELD by the majority of the Court (Seton-Karr, J., dissenting) that the Code makes no provision for any investigation by a Magistrate of the claims of third persons to property which has been attached. The claimants are not barred by the sale, and may bring a suit in the Civil Court against the purchasers to establish their rights.—*Reg. v. Chumroo Roy*, W. R. 35 (F. B.).

THE proper remedy for claimants to property attached as belonging to an absconding offender is by a civil suit. The Court declined to quash such an attachment as made without observance of due formalities, being of opinion that the plea of informality could be considered on the surrender of the fugitive, but cautioned the Magistrate against a sale until the needful formalities were carried out.—*In re Chunder Bhow Sing and others*, 17 W. R. 10.

D.—Other rules regarding Processes.

Act X., 1872,
ss. 148, para.
2, 150, 156,
352, 355, 494,
para. 1.

Act X., 1875,
ss. 81, 84.

Act IV., 1877,
ss. 34, 36,
53, 135, 136,
217.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons;

(b) if at such time he fails to appear, and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

A WITNESS arrested on a warrant should not be treated as a criminal.—*Cal. H. C. Cir.*, No. 21, Nov. 22, 1864.

A MAGISTRATE is not bound under this section to enforce the attendance of witnesses by warrant, except upon proof of due service of summons.—*Abdoor Ruhman, Petitioner*, 7 W. R. 37.

A MAGISTRATE should take great care that a warrant, which always implies personal arrest and restraint, never goes forth when a summons to attend would be sufficient for the ends of justice.—*Smyth*, p. 93.

THIS section empowers a Magistrate to issue a warrant against a witness, only when, after a reasonable enquiry, he believes that a particular witness will not attend voluntarily. It does not authorize the issue of warrants by wholesale in lieu of summonses. In permitting bail to be given by an accused person, a Magistrate has no right to impose conditions so as to throw difficulties in the way of the accused procuring bail.—*In re Mohesh Chunder Banerjee*, 4 B. L. R., App. 1.

A MAGISTRATE cannot issue a warrant of arrest against a witness, unless he is first satisfied that the witness has disobeyed a summons which was served on him. In order to make a person summoned as a witness liable under s. 174, Penal Code, the

fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he willingly departed from the place where he had attended before the time at which it was lawful for him to depart.—Reg. v. Sutherland, 14 W. R. 20.

91. When any person for whose appearance or arrest the officer Act IV., 1877, s. 140.
Power to take bond for presiding in any Court is empowered to issue a
appearance. summons or warrant is present in such Court,
such officer may require such person to execute a bond with or without
sureties for his appearance in such Court.

92. When any person who is bound by any bond taken under this Act X., 1872, s. 208, para. 2.
Arrest on breach of bond Code to appear before a Court does not so ap-
for appearance. pear, the officer presiding in such Court may Act IV., 1877, s. 124, para. 2.
issue a warrant directing that such person be arrested and produced
before him.

93. The provisions contained in this chapter, relating to a summons Act X., 1872, ss. 156, para. 1, 185.
Provisions in this chapter and warrant, and their issue, service, and execu-
generally applicable to sum- tion, shall, so far as may be, apply to every Act IV., 1877, s. 52.
monses and warrants of summons and every warrant of arrest issued
arrest. under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

94. Whenever any Court, or, in any place beyond the limits of the Act X., 1872, s. 365.
Summons to produce towns of Calcutta and Bombay, any officer in
document or other thing. charge of a police-station, considers that the Act X., 1875, ss. 86,
production of any document or other thing is necessary or desirable for Act IV., 1877, s. 144.
the purposes of any investigation, inquiry, trial, or other proceeding
under this Code by or before such Court or officer, such Court may issue
a summons, or such officer a written order, to the person in whose pos-
session or power such document or thing is believed to be, requiring
him to attend and produce it, or to produce it, at the time and place
stated in the summons or order.

Any person required under this section merely to produce a docu- Act X., 1877, s. 164.
ment or other thing shall be deemed to have complied with the requi-
sition if he cause such document or thing to be produced instead of
attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evi- New.
dence Act, 1872, sections 123 and 124, or to apply to a letter, post-card,
telegram, or other document in the custody of the Postal or Telegraph
Authorities.

Act X., 1872, **95.** If any document in such custody is, in the opinion of any Dis-
s. 369, last **Procedure as to letters** **trict Magistrate, Chief Presidency Magistrate,**
sentence. **and telegrams.** **High Court, or Court of Session, wanted for**
Act IV., 1877, **the purpose of any investigation, inquiry, trial, or other proceeding**
s. 146. **under this Code, such Magistrate or Court may require the Postal or**
Telegraph Authorities, as the case may be, to deliver such document to
such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for, and to detain, such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

B.—Search-warrants.

Act X., 1872, **96.** Where any Court has reason to believe that a person to whom
s. 336. **When search-warrant may** **a summons or order under section 94, or a re-**
Act X., 1875, **be issued.** **quisition under section 95, paragraph one, has**
s. 87. **been or might be addressed, will not or would not produce the docu-**
Act IV., 1877, **ment or other thing as required by such summons or requisition,**
s. 145. **or where such document or other thing is not known to the Court**
to be in the possession of any person,

Act X., 1872, **or where the Court considers that the purposes of any inquiry,**
s. 368, para. **trial, or other proceeding under this Code, will be served by a general**
1. **search or inspection,**
Act IV., 1877, **it may issue a search-warrant; and the person to whom such war-**
s. 159. **rant is directed may search or inspect in accordance therewith and the**
provisions hereinafter contained.

Act X., 1872, **Nothing herein contained shall authorize any Magistrate, other**
s. 369, cl. 1. **than a District Magistrate or Chief Presidency Magistrate, to grant a**
warrant to search for a document in the custody of the Postal or Tele-
graph Authorities.

It is essential to the legality of a search-warrant that the production of some specified and particular thing is desired; that the Magistrate alone shall determine that such production is necessary; and that a specified house or place only is to be searched.—*Reg. v. Syed Hossein Ali Chowdhury*, 8 W. R. 74.

Act X., 1872, **97.** The Court may, if it thinks fit, specify in the warrant the parti-
s. 368, para. **cular place or part thereof to which only the**
2. **Power to restrict warrant.** **search or inspection shall extend; and the per-**
General war- **son charged with the execution of such warrant shall then search or**
rant should **inspect only the place or part so specified.**
not be the
rule.

Act X., 1872, **98.** If a District Magistrate, Sub-divisional Magistrate, Presidency
s. 377. **Magistrate, or Magistrate of the first class, up-**
Act IV., 1877, **on information and after such inquiry as he**
s. 160. **thinks necessary, has reason to believe that any**
place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps, or for forging,

or that any forged documents, false seals, or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps, or for forging, are kept or deposited in any place,

he may, by his warrant, authorize any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps, or coins therein found, which he reasonably suspects to be stolen, unlawfully obtained, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments, or materials before a Magistrate, or to guard the same on the spot, until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments, or materials, knowing or having reasonable cause to suspect the said property to have been stolen, or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments, or materials to have been forged, falsified, or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

99. When, in the execution of a search-warrant at any place beyond

Disposal of things found in search beyond jurisdiction.

the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Act X., 1872, ss. 373, para. 2, 374.

C.—Discovery of persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class, or

Search for persons wrongfully confined.

Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.—General Provisions relating to Searches.

Act X., 1872, ss. 370, 371, 372, 373, para. 1, 375, 376. **101.** The provisions of sections 43, 75, 77, 79, 82, 83, and 84, shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

Act IV., 1877, s. 161.

Act X., 1872, s. 382. **102.** Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Act X., 1872, ss. 383, 384. **103.** Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

Act IV., 1877, ss. 163, 164. **104.** If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Act X., 1872, s. 385. **105.** Search to be made in presence of witnesses. more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search, and of the places in which they are respectively found, shall be prepared by such officer or other person, and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

E.—Miscellaneous.

Act X., 1872, s. 367, first part. **106.** Power to impound document, &c., produced. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Act X., 1875, s. 1.

Act X., 1872, s. 378, para. 2. **107.** Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Act IV., 1877, s. 147.

PART IV. PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

106. Whenever any person accused of rioting, assault, or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

Act X., 1872, ss. 489, para. 1, 490, clause 1.
Act X., 1875, s. 140.
Act IV., 1877, s. 208.
Bond becomes void when conviction set aside, N. W. P., 1875, p. 376.
Act X., 1872, ss. 490, 493, para. 1.
Cf. s. 506.
Act X., 1875, s. 141.
Act IV., 1877, s. 209.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

It is illegal to make an order for security under this section when there is simply a possible apprehension of a future breach of the peace.—Reg. v. Abdul Huq, 20 W. R. 57.

WHEN the accused is acquitted of the offences enumerated in this section, it is not competent to the Court to call upon him to give security.—Mad. H. C. Pro., May 19, 1874; Weir, p. 74.

A BENCH of Magistrates, whether empowered under s. 260 or s. 261 of this Code, cannot try a case of breach of the peace or any offence except those mentioned in ss. 260 and 261.—Reg. v. Debbeki Pattak, 21 W. R. 12.

A MAGISTRATE is not competent to require persons to give security to keep the peace until he has adjudicated, on evidence taken in their presence, that they have, by their conduct, rendered this necessary.—*In re Umda Khanum* and others, 3 Cal. Law Rep. 72.

THIS section cannot be applied to cases where there is only a possible apprehension of future breach of the peace. If such breach appears to the Magistrate to be likely, he can apply to the officer having authority, who can proceed under s. 107.—Reg. v. Hur Kumari Dasia, 24 W. R. 10.

AN order requiring security to keep the peace is not appealable. But the District Magistrate may, at any time, for sufficient reasons, to be recorded in writing, cancel any bond for keeping the peace executed under chapter 8 of this Code or by order of any Court in his district not superior to his Court.—See s. 125, *infra*.

THE order of the Magistrate, directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute personal recognizances to keep the peace, was upheld as legal and necessary, as the facts of the case showed an intention to commit a breach of the peace.—Reg. v. Gendoo Khan, 7 W. R. 14.

AN order calling for recognizances under s. 106, or for security under s. 107 of this Code, must be passed at the time of deciding the original case. If no such order is then made, subsequent proceedings must be taken under s. 107, and the parties summoned to show cause.—Gobind Sooboodhee and others, Petitioners, 15 W. R. 56.

A MAGISTRATE has no power to make an order that the accused person should enter into a bond to keep the peace, until after the adjudication that it is necessary for the preservation of the peace to take a bond from him, and until he is satisfied on that point, unless there is an admission by the party against whom the order is to be made.—Reg. v. Lall Beharee Singh and others, 11 W. R. 50.

THE words in this section, "taking other unlawful measures with the evident intention of committing the same" (that is, a breach of the peace), do not include the offence of intimidation by threatening to bring false charges. Where, therefore, a person was convicted under ss. 503 and 506 of the Penal Code of such offence, it was held that the Magistrate by whom such person was convicted could not, under s. 106 of the Criminal Procedure Code, require him to give a personal recognizance for keeping the peace.—Empress v. Raghubar, 1 L. R., 2 All. 251.

ON a conviction for criminal trespass under s. 447, Penal Code, the Joint-Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in s. 106 of the Criminal Procedure Code for which such recognizance could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint-Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace.—Reg. v. Jhapoo and others, 20 W. R. 37.

ALTHOUGH it is competent to a Magistrate, upon conviction and sentence for assault, to order the accused to enter into an engagement to keep the peace, yet, having omitted to do so, he can afterwards only institute proceedings under s. 107, upon receiving some further credible information (other than that which he derived from the previous trial) that the parties are likely to commit a breach of the peace. It is essential to the validity of a summons issued under s. 107 that it should contain the substance of the information by which the Magistrate is moved to act. A separate summons should be issued to each person required to furnish security, and a separate bond taken from each, which should be in the form required by the Code, and in the order the Magistrate should state the period for which the person against whom the order is made is to be imprisoned if he fail to comply with it.—Reg. v. Powell and others, 3 N. W. P. 96.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Act X., 1872, ss. 491, 502, last para. **107.** Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit to fix.

Act IV., 1877, ss. 215, 231. Security for keeping the peace in other cases.

IT is not necessary to call witnesses in support of an information laid before a Magistrate previous to requiring security for keeping the peace.—*In re* Mullick Fukeerun, 11 W. R. 6.

It is illegal to take recognizances from one person in order to prevent another from committing a breach of the peace.—*Ram Coomarr Banerjee v. Rajah Gopal Singh Deb*, 17 W. R. 54.

THE report of a police-officer is "credible information" within the meaning of this section.—*In re Brindabun Shaha*, 10 W. R. 41. But such report is not legal evidence.—*Obhoya Chowdry*, 6 B. L. R. App. 148.

A PETITION, unsupported by any complaint or deposition on solemn affirmation, cannot be considered "credible information" within the meaning of this section.—*Chamaro Malo and others v. Kashi Chunder Lalla and others*, 8 W. R. 85.

UNDER this section, a Magistrate is bound, in case of a conviction, to adhere strictly to the requirements of the summons. It is illegal either to increase the amount, or to alter the nature of the security, or to extend the period for which it was required.—*Reg. v. Iswari Prasad Singh*, 9 B. L. R. 44.

A MAGISTRATE acts without jurisdiction in making an order binding a person to keep the peace when there is no complaint before him of a breach of the peace being likely to be committed, and without taking evidence in the matter.—*In re Brojendra Coomarr Rai Chowdhry*, Petitioner, 17 W. R. 35.

It should appear on the face of the Magistrate's order that he had received credible information that the persons ordered to enter into their recognizances were likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace.—*In re Birreshuree Pershad and another*, 6 W. R. 93.

If a Magistrate considers a statement on oath of a complainant to be "credible information," there is no reason why he should not call on the accused to give security, the sufficiency of such credible information being ordinarily left to the Magistrate to determine.—*Tarinee Kant Lahoori Chowdhry*, Petitioner, 8 W. R. 79.

It is only evidence of specific conduct on the part of the accused, from which the reasonable and immediate inference is that they are likely to commit a breach of the peace, which will justify a Magistrate in adjudicating under s. 107 of this Code.—*Rajah Run Bahadoor Singh and others v. Rance Tillesuree Koer*, 22 W. R. 79.

In a case in which a person is called upon to show cause why he should not give security to keep the peace, the accused should have the opportunity of having the evidence of the witnesses for the prosecution given in his presence, and of showing by cross-examination that no charge is made out against him.—*Maghun Misser v. Chumman Telee*, 10 W. R. 462; 2 B. L. R. 7.

THE act, of which information is given, and in respect of which security to keep the peace is required, must be an act which is shewn to be in contemplation at the time of the information given, and not merely one, a repetition of which may be expected or apprehended from past misconduct of the kind without anything further.—*Mad. H. C. Pro.*, Aug. 29, 1876; *Weir*, 37.

A STATEMENT by the complainant (believed by the Magistrate), that he expected the defendant at any time to make an attempt on his person or property, is credible information, within the meaning of this section, of an intended breach of the peace. The Magistrate may require the accused to deposit money, in lieu of security, for his good behaviour.—*Reg. v. Kristendro Roy*, 7 W. R. 30.

AFTER calling upon a person under this section to show cause why he should not enter into a recognizance to keep the peace, a Magistrate should not order the defendant to enter into such recognizance without taking evidence or making an enquiry whether the defendant had committed any act which might probably occasion a breach of the peace.—*Queen v. Deo Nudun Singh*, 12 W. R. 16.

THE party required to show cause why he should not give security to keep the peace is not entitled, when sufficient time has already been given him to show cause and to produce his witnesses, to an adjournment in order to produce his witnesses. In such a case he must either bring his witnesses with him, or apply for summonses in such time as to enable him to bring them into Court on the day fixed.—*Chulan Tewari v. Sukedad Khan and others*, 23 W. R. 9.

THE report of a Subordinate Magistrate is such "credible information" within the meaning of this section as to authorize a Magistrate to summon an individual named in the report, and require him to enter into a recognizance to keep the peace, although the report does not suggest that a recognizance should be required, but

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suggests other means for the prevention of disputes and the preservation of order. —Nellikil Edatthil Itti Pungy Achen, Ex-parte Petitioner, 2 Mad. H. C. Rep. 240. But such report is not legal evidence. —Nassabin Basapi, Bom. H. C., Nov. 23, 1871.

THE petitioner, a tahsildár, applied to the police for assistance to protect him while distraining the crops of certain raiyats for arrears of rent. On this being reported to the Magistrate, he required the petitioner to furnish security to keep the peace on the ground that any riot which might result from the resistance of the raiyats to the attachment of their crops would be attributable to his act. This order was set aside by the High Court as illegal, because the Magistrate had not found that the petitioner himself was likely to commit a breach of the peace. —*In re Sheo Surun Lall*, 3 Cal. Law Rep. 280.

TO CONSTITUTE a proper foundation for an order under this section, it is necessary that the Magistrate should adjudicate upon legal evidence before him that the person against whom the order is made is likely to commit a breach of the peace, and the Magistrate should give notice to the party who is to be affected by the order of the particular conduct on his part which is complained of. Where such notice was given, and the ground of complaint to which such notice had reference was found by the Magistrate to be unfounded, it was held that the Magistrate could not proceed to adjudicate that an entirely different ground existed upon which it was likely that the party charged would commit a breach of the peace. —*Ramkissore Acharjee Chowdhry v. Arip Khan*, 21 W. R. 6.

THE words in the corresponding section of the old Code, "or to do any act that may probably occasion a breach of the peace," were construed to mean a wrongful act, and not one which a person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his right of property, because another person would be likely to commit a breach of the peace if he did so. —*Kashi Chunder Dass v. Harkishore Dass*, 19 W. R. 47; 10 B. L. R. 441. In this case the Magistrate took security from a party who was building a wall on his own land, simply because the droppings would probably fall on a neighbour's house, and injure it, thereby leading to a probable breach of the peace. The High Court quashed the Magistrate's order on the ground mentioned above. In consequence of the above ruling, it has been enacted in the above section that the act complained of as likely to occasion a breach of the peace must be a "wrongful act."

CERTAIN persons were convicted by a Magistrate of the first class of assault, an offence punishable under s. 352, Penal Code. The case was brought to the knowledge of the High Court by the complainant preferring a petition to it, together with a copy of the Magistrate's order. This petition was laid before Straight, J., who, observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace, as provided by s. 489 of Act X. of 1872 (s. 106 of this Code), directed the Magistrate to summon such persons to show cause why they should not be required, under s. 491 of that Act (s. 107 of this Code), to enter into a bond to keep the peace. The Magistrate accordingly summoned such persons as directed, the summonses setting forth that they were issued "under the orders of the High Court." The Magistrate took evidence on behalf of such persons, and eventually made an order requiring such persons to enter into a bond to keep the peace. Such persons were fully aware of the order made by Straight, J. Such persons applied to the High Court to set aside the order requiring them to enter into a bond to keep the peace, on the ground that the Magistrate had not proceeded of his own motion, but under the order of Straight, J., which was made without jurisdiction, and on the ground that the summonses had not set forth the report or information on which they were issued. *Held* by Stuart, C.J., that, inasmuch as Straight, J., when he made his order, represented the full authority and jurisdiction of the High Court, such order was final, and the application could not be entertained. *Held* by Pearson, J., Spankie, J., and Oldfield, J. (Spankie, J., doubting whether such order could be questioned), that the order of Straight, J., was one which he was competent to make as a Court of Revision. *Held* by Pearson, J., and Spankie, J., that, inasmuch as such persons had not been in the slightest degree prejudiced by the defect in the summonses which were issued to them, such defect was not a ground on which to set aside the Magistrate's order requiring them to enter into a bond to keep the peace. —*Empress v. Muhammad Jafir and others*, I. L. R., 3 All. 545 (F.B.).

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may, in his discretion, detain such person in custody until the completion of the inquiry hereinafter prescribed.

SEPARATE proceedings should be taken against each person ordered to find security, unless it is clear that there was such a connection between the parties as indicates the necessity of a contrary course.—Mad. H. C. Pro., March 17, 1863; Weir, 36.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, receives information—

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding six months, as the Magistrate thinks fit to fix.

A SESSIONS Judge has no power to decide as to the necessity for taking security for good behaviour, or without inquiry to pass orders as to the nature of the security to be furnished, or as to the time it is to remain in force. The jurisdiction as to the necessity is in the Magistrate, and after sending the accused to the Magistrate under s. 109 the Sessions Judge is *functus officio*.—Reg. v. Gungaram Potdar, 24 W. R. 10.

SECURITY cannot be demanded in addition to a specific punishment passed upon a prisoner; that is to say, a man sentenced to one year's imprisonment for house-breaking cannot legally be called upon to furnish security for his good behaviour at the expiration of his sentence. It must, however, be borne in mind that this instruction does not apply to recognizances, or security for keeping the peace from persons convicted of rioting, assault, or other breach of the peace.—Circ. No. 43 of 1864, Jud. Com., Oudh.

IN fixing the amount of security to be demanded from any person under ss. 109 and 110, the Magistrate should consider the station in life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment in default is provided as a protection to society against the perpetration of crime by the individual, not as a punishment for crime committed, and being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security.—Mad. H. C. Pro., April 26, 1869; Weir, 36.

Act X., 1872,
ss. 505, 506.
Act IV., 1877,
ss. 213, 214,
231.

1 O'Kin. 271.

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class specially empowered in this behalf by the Local Government, receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

A MAGISTRATE should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the sureties should be bound.—*In re Nilnadhuh Ghosal and others*, 19 W. R. 1.

THE object of this chapter is the prevention, not the punishment, of crime. When a charge of a specific offence is under trial, proceedings under this chapter should not be instituted.—*In re Umbica Proshad*, 1 Cal. Law Rep. 268.

AN order in a case calling upon the prisoner under s. 110 to furnish security for good behaviour was set aside as erroneous, that section not referring to persons of a violent or turbulent character.—*Narain Sooboodhi*, Petitioner, 6 W. R. 6.

SEPARATE proceedings should be taken against each person ordered to find security, unless it is clear that there was such a connection between the parties as indicates the necessity of a contrary course.—*Mad. H. C. Pro.*, March 17, 1863; *Weir*, 36.

THE exercise of the power given by s. 110 is not confined to cases in which positive evidence of the commission of crime is forthcoming against the persons charged.—*In the matter of the petition of Pedda Siva Reddi and another*, 1. L. R., 3 Mad. 238.

A PERSON from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security; that is, the amount must be in accordance with his circumstances.—*Empress v. Dedar Sarkar*, 1. L. R., 2 Cal. 384.

AFTER the expiration of the term of confinement in default of security, a second security cannot be demanded, except upon some new proof of bad livelihood, or that a person is not capable of following an honest calling.—*Jaswant Singh*, Petitioner, 6 W. R. 18; 1 Ind. Jur., N. S., 301.

WHERE the amount of security appeared to be unreasonable and excessive, it was held that the High Court had the power to call upon the Magistrate to state the grounds upon which he fixed the amount, and the Magistrate is bound to comply with the requisition.—*Empress v. Dedar Sarkar*, 1. L. R., 2 Cal. 384.

THE power given by s. 110 should be exercised with extreme discretion. This section is not intended to apply to persons of "by no means a reputable character." An order requiring persons to deposit cash in lieu of entering into a bond as security for their future good behaviour is bad in law.—*Empress v. Kala Chand Dass*, 1. L. R., 6 Cal. 14.

IN making an order for security to keep the peace under s. 110, a Magistrate has no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law, *e.g.*, a condition requiring the accused to furnish two sureties being persons of respectability and substance not related to him, and residing within one mile of his house. The ground on which a Magistrate has power to refuse to accept any surety must be a valid and reasonable ground.—*Narain Sooboodhee*, Petitioner, 22 W. R. 37.

AN order requiring security for good behaviour should not form part of the sentence for dishonestly receiving stolen property. A proceeding should be drawn out, representing that the Magistrate is satisfied, from the evidence, as to general character, adduced before him in the case, that the prisoner is by repute an offender within the terms of s. 110, and therefore security will be required from him, and an order should be recorded to the effect that, on the expiry of the imprisonment, the prisoner be brought up for the purpose of being bound.—*Empress v. Pratab*, I. L. R., 1 All. 666.

SECTION 110 does not apply to a case where the original charge was one of *injury to person*. The section solely relates to the calling upon of persons of habitually *dishonest* lives, and in *that sense* “desperately dangerous,” to find security for good behaviour, as a protection to the public against a repetition of crimes by them in which the *safety of property* is menaced, and not the security of person alone is jeopardised. Hence a Magistrate cannot demand security for good behaviour from a person against whom there is no evidence to show that he is a “habitual robber, housebreaker, or thief, or receiver of stolen property,” but who had been guilty of acts of violence only.—*Empress v. Nawab* and another, I. L. R., 2 All. 835.

THE mere fact of a previous conviction or of previous convictions of offences involving dishonesty is not sufficient to justify the putting in force the powers of s. 110, unless there is some additional evidence to show that the person complained against has done some act or resumed avocations that indicate upon his part an intention to return to his former course of life, and to pursue a career of preying on the community. The greatest thief is entitled to a *locus penitentia* when he has served out his punishment: it is only when he outrages that grace which is extended to him, and thereby shows he is unreformed, that the machinery of the Act should be brought into operation in order to obtain a substantial guarantee for society that he will not commit further depredations upon it.—*Empress v. Nawab* and another, I. L. R., 2 All. 835.

111. The provisions of sections 109 and 110 do not apply to Euro- Act X., 1872,
s. 517.
pean British subjects in cases where they may Act IV., 1877,
s. 232.
Proviso as to European pean subjects in cases where they may
vagrants. be dealt with under the European Vagrancy
Act, 1874.

112. When a Magistrate acting under section 107, section 109, or Act X., 1872,
ss. 492, 509,
para. 1, 515,
para. 1.
section 110, deems it necessary to require any Act IV., 1877
ss. 216, para
1, 222.
person to show cause under such section, he
shall make an order in writing, setting forth the substance of the in-
formation received, the amount of the bond to be executed, the term
for which it is to be in force, and the number, character, and class of
sureties (if any) required.

IN a case in which parties are summoned to show cause why they should not be bound over to keep the peace, the proceedings should be conducted with due regard to the provisions of ss. 107 and 112, and the summons should distinctly specify the amount and nature of the security required, and the time for which the security is to run.—*Reg. v. Gunga Singh and others*, 20 W. R. 36.

UNDER the above section it is essential that the summons should set out the substance of the information against the accused. When the party summoned shows cause, the Magistrate, in taking evidence, should look, not merely to the question of possession, but also whether he is satisfied that there was a probability of a breach of the peace.—*Kunjbehary Chowdhry v. Eknath Gurain*, 15 W. R. 43.

WHERE information of a probable breach of the peace is first laid in general terms, and is subsequently supported by evidence, which is given in the presence of the persons who are particularly implicated by it, the case for a demand for recognizances may properly rest on the whole evidence taken in the case; but when a Magistrate calls upon persons to show cause why they should not be bound down in their own recognizances to keep the peace, he cannot go beyond the requisition, and on the adjudication of the matter order them to furnish other securities besides.—*Abdool Bari and others*, Petitioners, 25 W. R. 50.

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Act X., 1872, s. 492, Expl. **113.** If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.
 Act IV., 1877, s. 216, para. 2. Procedure in respect of person present in Court.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court :
 Summons or warrant in case of person not so present.

Act X., 1872, ss. 494, 515, para. 1. **115.** Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.
 Act IV., 1877, s. 217, proviso. In bad that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.
 cases, police can arrest without warrant.

Act X., 1872, s. 495. **116.** The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.
 Act IV., 1877, s. 218. Power to dispense with personal attendance.

New. 1 O'Kin. 130. **117.** When an order under section 112 has been read or explained, under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.
 See Act X., 1872, s. 491, Explus. Inquiry as to truth of information.

Act X., 1872, s. 515, para. 3. Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner herein-after prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

A MAGISTRATE is bound to assist both parties in bringing their witnesses by issuing summonses to attend.—Reg. v. Cheyt Singh and another, 22 W. R. 70.

SEPARATE proceedings should be taken against each person ordered to find security, unless it is clear that there was such a connection between the parties as indicates the necessity of a contrary course.—Mad. H. C. Pro., March 16, 1863; Weir, 36.

AN ORDER of the District Magistrate, requiring certain persons to enter into recognizances and find security to keep the peace, was reversed, as such order appeared to have been made without any legal evidence having been taken.—*Reg. v. Delpatram Pemabhai*, 5 Bom. H. C. Rep., Cr. Ca., 105.

IT is only evidence of specific conduct on the part of the accused, from which the reasonable and immediate inference is that they are likely to commit a breach of the peace, which will justify a Magistrate in adjudicating under s. 107 of this Code.—*Rajah Run Bahadoor Singh and others v. Ranee Tilessuree Koer*, 22 W. R. 79.

AN ORDER postponing proceedings, instituted under s. 107 of this Code, until the person called upon to show cause shall have established in a Civil Court the title claimed by him to the property disputed, with reference to which there is a likelihood of a breach of the peace, amounts to a discharge.—*Empress v. Dhuniram*, 5 Cal. Law Rep. 366.

THE defendant should have an opportunity of cross-examining the witnesses produced against him, of making his own statement, and of calling witnesses in his own behalf. Evidence as to character, bad or good, should be general, and not particular.—*Mad. H. C. Rep.*, Nov. 3, 1868; *Weir*, 37; *Noor Mahomed v. Nil Rutun Bagchee*, 18 W. R. 2 (F.B.).

A MAGISTRATE has no power to make an order that an accused person should enter into a bond to keep the peace until after the adjudication that it is necessary, for the preservation of the peace, to take a bond from him, and until he is satisfied on that point, unless there is an admission by the party against whom the order is to be made.—*Reg. v. Lall Beharee Singh and others*, 11 W. R. 50.

WHERE the Magistrate by whom only part of the evidence has been taken is succeeded by another Magistrate while the inquiry is pending, the person called upon to show cause why he should not give security may insist, before the latter, upon the re-call and re-examination of the witnesses whose evidence has been already taken by the former Magistrate.—*Baroda Kant Roy v. Korimuddi Moonshee and others*, 4 Cal. Law Rep. 452.

THE report of a Subordinate Magistrate, though it is credible information on which a Magistrate of the District would be justified in issuing a summons, is not evidence on which he can properly arrive at a conclusion that the accused is likely to cause a breach of the peace. Evidence shall be recorded, and if none is forthcoming, security to keep the peace should not be demanded.—*Reg. v. Irapa Basupa*, 8 Bom. H. C. Rep., Cr. Ca., 162.

ALTHOUGH a Magistrate may summon a person on credible information to show cause why he should not be bound over to keep the peace, he cannot, under s. 107 of this Code, bind over such person to keep the peace until he has adjudicated on evidence produced before him by the person accused. The notice to the accused should give him sufficient time to come in to produce his evidence.—*Reg. v. Isreepershad Singh*, 20 W. R. 18.

IT is incumbent on the Magistrate, before taking a bond for the preservation of the public peace, to adjudicate judicially on evidence given before him as to the necessity for taking security. The *onus* in such case is on the party on whose complaint the summons was issued.—*A. D. Dunne v. Hem Chunder Chowdhry and another*; *Beharee Lal Brojolassee v. Dawrick Mozoomdar*, 12 W. R. 60; 4 B. L. R. 46 (F.B.). See also *Reg. v. Nirunjun Singh*, 2 N. W. P. 143.

THE party required to show cause why he should not give security to keep the peace is not entitled, when sufficient time has already been given him to show cause and to produce his witnesses, to an adjournment in order to produce his witnesses. In such a case he must either bring his witnesses with him, or apply for summonses in such time as to enable him to bring them into Court on the day fixed.—*Chulan Tewari v. Sukdad Khan and others*, 23 W. R. 9.

A REPORT by a Subordinate Magistrate of facts within his knowledge would amount to credible information, and, if duly recorded, would form a ground for a Magistrate's issuing a summons, but, unless supported by other evidence, would not form a sufficient ground for final adjudication. In order to warrant an adjudication,

there should be a judicial investigation, and the order should be passed on legal evidence duly taken and recorded.—Reg. v. Jivanji Linji, 6 Bom. H. C. Rep., Cr. Ca., 1.

A PERSON against whom proceedings for bad livelihood have been taken is entitled to have embodied in a charge the precise matter which the Magistrate considers established by evidence against him. It is not sufficient to say generally that there is suspicion. He should be asked to produce his witnesses, or offered assistance to procure their attendance. He should be admitted to bail. A Magistrate is not competent to refuse bail unless the law sanctions such refusal.—*In re Kokoor Singh*, 1 Cal. Law Rep. 130.

Act X., 1872, s. 497.
Act IV., 1877, s. 220.
118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112 :

Act X., 1872, s. 493, para. 1.
Act IV., 1877, s. 220.
secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive :

1 O'Kin. 95.
thirdly—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

It is illegal to take recognizances from one person in order to prevent another from committing a breach of the peace.—*Ram Coomur Banerjee v. Rajah Gopal Singh Deb*, 17 W. R. 54.

It is illegal to take a second recognizance before the period fixed in the first recognizance has expired.—Reg. v. Kunodinee Kanth Banerjee Chowdhry, 18 W. R. 44 ; 9 B. L. R., App., 30.

ON a requisition from the High Court, a Magistrate is bound to state the grounds upon which he fixed the amount of security. A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security.—*Empress v. Dedar Sarkar*, 1 L. R., 2 Cal. 384 ; 1 Cal. Law Rep. 95.

In fixing the amount of security to be demanded from any person under ss. 109 and 110, the Magistrate should consider the station in life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment in default is provided as a protection to society against the perpetration of crime by the individual, not as a punishment for crime committed, and being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security.—*Mad. H. C. Pro.*, April 26, 1869 : *Weir*, 36.

Act X., 1872, s. 497.
Act IV., 1877, s. 220.
119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

UNDER this section a Magistrate would not be justified in keeping the accused person in custody unless he failed to give bail.—*In re Kokoor Singh*, 1 Cal. Law Rep. 130.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Act X., 1872, ss. 480, para. 2, 504, para. 2.
Act IV., 1877, ss. 210, 224.
I. L. R., 1 All. 666.

In other cases such period shall commence on the date of such order.

WHEN a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound.—*Reg. v. Shona Dagee*, 24 W. R. 13.

P WAS convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped, to be rigorously imprisoned, and, on the expiration of the term of imprisonment, to furnish security for good behaviour. *Held* that the offence of theft not being the same offence as that of dishonestly receiving stolen property, the punishment of whipping was illegal. *Held* also (with some hesitation) that there was evidence as to general character adduced before the Magistrate which justified him in dealing with P under s. 110 of this Code. *Held* also that the order requiring security should not have formed part of the sentence for the offence of which P was convicted. A proceeding should have been drawn out representing that the Magistrate was satisfied, from the evidence as to general character adduced before him in the case, that P was by repute an offender within the terms of s. 110 of this Code, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of imprisonment, P should be brought up for the purpose of being bound.—*Empress v. Partab*, 1 L. R., 1 All. 666.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be; and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Act X., 1872, s. 502, para. 6.
Act IV., 1877, s. 227.

WHEN a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not nevertheless proceed to forfeit such recognizance, it must be held that he thought it unnecessary to do so. Proceedings taken after the lapse of a considerable period are bad, and contrary to the intention of the law.—*In re Ram Chunder Lalla*, 1 Cal. Law Rep. 134.

On the 20th April 1877, A was bound down to keep the peace for one year. On the 14th of January 1878 he was convicted of an offence, and sentenced therefor to fine and imprisonment, but no order was made for the recovery of the penalty, though the Magistrate knew that the recognizance had been forfeited. On the 2nd of April 1878, the Magistrate, at the instance of a third party, called upon A to show cause why the penalty of the recognizance should not be paid, and a warrant for its recovery was issued on the 6th June 1878. *Held* that the warrant must be quashed, on the ground that the Magistrate having inflicted a sentence of fine and imprisonment with the knowledge that the recognizance was forfeited, he was not competent to inflict a further penalty on a re-consideration of the circumstances.—*In re Parbutti Churn Bose and another*, 3 Cal. Law Rep. 2.

Act X., 1872, s. 516. **122.** A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Power to reject sureties.

IN making an order for security, a Magistrate has no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law, *e.g.*, a condition requiring the accused to furnish two sureties, being persons of respectability and substance not related to him, and residing within one mile of his house. The ground on which a Magistrate has power to refuse to accept any surety must be a valid and reasonable ground.—Narain Soobodahee, Petitioner, 22 W. R. 37.

Act X., 1872, ss. 489, para. 1, last sentence, 490, last sentence, 497, 498, 499, para. 3, 510. **123.** If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires, or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Act X., 1872, ss. 507, 508. **When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.**

Such Court, after examining such proceedings, and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Act X., 1872, s. 499, para. 3. **Kind of imprisonment.** Imprisonment for failure to give security for keeping the peace shall be simple.

Act X., 1872, s. 510, para. 3. **Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.**

THE order should direct that the person bound to give security be imprisoned until the security is found, provided always that the period of such imprisonment is in no case to exceed the period for which the person is bound.—Mad. H. C. Pro., Sep. 4, 1874; Weir, p. 37.

Act X., 1872, ss. 500, 511. **124.** Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard, to the community or to any other person, he may order such person to be discharged.

Act IV., 1877, s. 225. **Power to release persons imprisoned for failing to give security.**

Act X., 1872, s. 512. **Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under**

this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

125. The District Magistrate may at any time, for sufficient reasons Act X., 1872, ss. 501, 513. to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his district not superior to his Court.

Power of District Magistrate to cancel any bond for keeping the peace.

A MAGISTRATE may cancel an order passed by him, summoning a person to show cause why he should not enter into a bond to keep the peace.—*Musst. Anundee Koor v. Ranev Koor*; *Govt. v. Must. Anundee Koor*, 10 W. R. 40.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction. Act X., 1872, ss. 501, 513. Act IV., 1877, s. 236.

Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123, and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

127. Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly. Act X., 1872, s. 480. Act XI., 1874, s. 43. Penal Code, ss. 145, 151.

Assembly to disperse on command of Magistrate or police-officer.

This section applies to the police in the towns of Calcutta and Bombay.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army, or a volunteer enrolled under the Indian Volunteers' Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly, or that they may be punished according to law. Act X., 1872, s. 481. Volunteers added.

Use of civil force to disperse.

Act X., 1872, **129.** If any such assembly cannot be otherwise dispersed, and if it
s. 482. is necessary for the public security that it
 Use of military force. should be dispersed, the Magistrate of the
 highest rank who is present may cause it to be dispersed by military
 force.

Act X., 1872, **130.** When a Magistrate determines to disperse any such assembly
s. 484, add- by military force, he may require any Commis-
ing volun- sioned or Non-commissioned Officer in com-
teers. mand of any soldiers in Her Majesty's Army or of
 Duty of officer command- any volunteers enrolled under the Indian Volun-
 ing troops required by Ma- teers' Act, 1869, to disperse such assembly by military force, and to arrest
 gistrate to disperse assem- and confine such persons forming part of it as the Magistrate may direct,
 bly. or as it may be necessary to arrest and confine in order to disperse the
 assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit ; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Act X., 1872, **131.** When the public security is manifestly endangered by any
s. 487. such assembly, and when no Magistrate can be
 Power of Commissioned communicated with, any Commissioned Officer
 Military Officers to disperse of Her Majesty's Army may disperse such assem-
 assembly. bly by military force, and may arrest and confine any persons forming
 part of it, in order to disperse such assembly, or that they may be
 punished according to law ; but if, while he is acting under this section,
 it becomes practicable for him to communicate with a Magistrate, he
 shall do so, and shall thenceforward obey the instructions of the Magis-
 trate as to whether he shall or shall not continue such action.

Act X., 1872, **132.** No prosecution against any Magistrate, Military Officer, police-
s. 488. officer, soldier, or volunteer, for any act purport-
 Protection against prose- ing to be done under this chapter, shall be in-
 cution for acts done under stituted in any Criminal Court, except with the
 this chapter. sanction of the Governor-General in Council ; and

Act X., 1872, (a) no Magistrate or police-officer acting under this chapter in good
ss. 483, 485, faith,
486. (b) no officer acting under section 131 in good faith,
 (c) no person doing any act in good faith in compliance with a re-
 quisition under section 128 or section 130, and
 (d) no inferior officer, or soldier, or volunteer, doing any act in obe-
 dience to any order which under military law he was bound to obey,
 shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

Act X., 1872, **133.** Whenever a District Magistrate, a Sub-divisional Magistrate,
s. 521, sub- Conditional order for re- or, when empowered by the Local Government
stituting moval of nuisance. in this behalf, a Magistrate of the first class,
"way" for considers, on receiving a report or other information, and on taking such
"thorough- evidence (if any) as he thinks fit,
fare."

that any unlawful obstruction or nuisance should be removed from any way, river, or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall, and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to suppress or remove such trade or occupation ; or

to remove such goods or merchandise ; or

to prevent or stop the construction of such building ; or

to remove, repair, or support it ; or

to alter the disposal of such substance ; or

to fence such tank, well, or excavation, as the case may be ; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A “public place” includes also property belonging to the State, camping-grounds, and grounds left unoccupied for sanitary and recreative purposes.

S. 133 has been held to be applicable to public nuisances only—not to the violation of a private right.—*Bissonauth Bhuttacharjee v. Janokee Nauth*, 4 Rev. Jud. and Pol. Jour. 172, Feb. 20, 1865.

IN case of an unlawful obstruction to a public thoroughfare, the Magistrate should proceed under s. 144, and not under s. 147.—*Baroda Persad Mustafee v. Mudoo Soodun Biswas*, 5 W. R. 5.

WHERE a Magistrate has commenced proceedings under s. 133, he is not at liberty to proceed otherwise than in conformity with the rules laid down in this chapter.—*Reg. v. Pitti Singh*, 8 W. R. 37.

WHERE an order has been issued under s. 133, and the person to whom such order is directed appears to show cause, the Magistrate is bound to take evidence under s. 137.—*In re Mohur Mandar*, 8 Cal. Law Rep. 431.

AN application to have it declared that a certain place could not be used for the purposes of cremation would not come under s. 133, and could not therefore be dealt with by a Magistrate.—*Gudadhur Kamila v. Baida Nath Jana*, 22 W. R. 6.

THE obstruction of a drain into which the sewerage of complainant's premises fell does not fall under s. 133, but is a matter for a civil suit and injunction. A Magistrate's order therefore to remove such an obstruction was held to be *ultra vires*.—*In re Troylukho Nath Bose*, 5 W. R. 58.

AN order under s. 133 is a judicial proceeding. Where, therefore, an error in law was committed in such proceeding, it was held that the High Court had power to review it.—*Gangaprasad v. Sobharam*, 9 Bom. H. C. Rep. 160; *Angelo Brothers v. Cargill and Co.*, 18 W. R. 41; 9 B. L. R. 417.

S. 133 does not warrant a Magistrate's interference with a prostitute for the purpose of removing her from her dwelling house simply on the ground of her profession, so long as she behaves herself orderly and quietly, and creates no open scandal by riotous living.—*Nundo Kumaree Peshagur v. Annund Mohun Goocho Thakurta*, 24 W. R. 68.

WHEN, after enquiry, a Magistrate finds that there is no sufficient cause for proceeding under s. 133, he is competent to let the matter drop. As a Court of Revision, the High Court will not enter upon a consideration of the value of the evidence on which the Magistrate decided so to act.—*Shonai Paramanick v. Jogendra Shaha* and another, 1 Cal. Law Rep. 486.

THE fact of a Magistrate taking action under s. 133 is *prima facie* sufficient to show that he considers the *locus in quo* to be a thoroughfare or public place; and if no objection is taken that it is not such, and the jury find that the order made under that section is reasonable and proper, the High Court will not interfere.—*In re Imandi Khan*, 8 Cal. Law Rep. 399.

A PERSON aggrieved by an order passed under s. 133 cannot institute a suit for damages against the parties who instituted proceedings before the Magistrate, unless it can be shown that such parties, in taking such proceedings, were actuated by malicious motives, or intended wrongfully to injure him.—*Chintamani Bapootha v. Digambar Mitter*, 2 B. L. R. 15, Short Notes.

IN the case of a complaint for the removal of an obstruction from a thoroughfare, a Magistrate should first enquire if the road is a public one or not. If he finds in the affirmative, he has jurisdiction to proceed; if in the negative, he should withhold his hand, and abstain from carrying out the order for removal of the obstruction.—*Becharam Bhattacharjee and others*, Petitioners, 15 W. R. 67.

THE obstruction of a private path leading from the house of a person to a public thoroughfare is not a nuisance under s. 133, as such path is not a thoroughfare or a public place. Before the issue of an order by a Deputy Magistrate for the removal of a nuisance, the opposite party should be called upon to show cause why the order should not be enforced.—*Reg. v. Janokinath Bhattacharjee*, 2 W. R. 36.

A MAGISTRATE'S powers, under s. 133, are confined to the instances specially mentioned in that section, which does not confer general powers upon a Magistrate to pass any order he may consider necessary for the protection of the public health. It is only from a thoroughfare or public place that under that section a Magistrate is at liberty to direct a nuisance to be removed.—*Shah Soojaut Hossein and another*, Petitioners, 22 W. R. 19.

A PERSON who, on receipt of an order made by a Magistrate under s. 133, declaring the existence of a right of way over such person's lands, demands, under s. 135, the appointment of a jury to try whether such order was reasonable, is not, by such action, estopped from afterwards bringing a suit in a Civil Court seeking to establish his right to the exclusive enjoyment of the same lands.—*Mutty Ram Sahoo v. Mohi Lall Roy*, 1. L. R., 6 Cal. 291.

THE law requires a jurymen to exercise his own understanding on the case submitted to him, and to decide on evidence, and not to follow blindly the opinion of his fellows. Where one out of three (in a jury of five) depends on the inspection and enquiries of the other two, the verdict of the three is not that of a legal majority. The provisions of ss. 133, 134, and 135, are only applicable when there is no doubt that the place where the alleged obstruction exists is a public thoroughfare.—*Pitambur Jugi v. Nasaruddy*, 25 W. R. 4.

THE order of a Magistrate under s. 133 should be confined to a direction to remove the nuisance complained of. In the case of a tank, the Magistrate cannot order the proprietor to excavate it; the proprietor ought to have the discretion allowed him as to the mode in which he will remove the nuisance caused by the tank. If a Magistrate is compelled to direct the excavation of the tank, the actual cost of excavation can alone be charged against the proprietor, at whose disposition the soil taken out in the course of excavation must be placed.—*In re Paul Dass*, 10 W. R. 51.

A CIVIL Court is not competent to set aside the order of a Magistrate made under s. 133 on the ground that such order was made without jurisdiction, because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under s. 133 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place, as between the parties to such suit and those who claim under them.—*Mutty Ram Sahoo v. Mohi Lall Roy*, I. L. R., 6 Cal. 291.

A MAGISTRATE cannot proceed to pass an order for the removal of a nuisance, under s. 133, without calling on the party to show cause why the order should not be passed against him, and without hearing the objections, even if they are filed after the time fixed for their presentation, but before he takes up the case. A Magistrate's power to fill up a tank is limited to having it fenced in, but where the tank is proved to be injurious to the community, he may treat it as a public nuisance, and cause it to be filled up.—*In re Bistoo Chunder Chuckerbutty*, 10 W. R. 27; see *Queen v. Janokinath Bhattacharjee*, 2 W. R. 36.

IN A case in which a Magistrate ordered a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and in which subsequently the Magistrate, on the application of the party charged, appointed a jury under s. 138, it was held that the question the jury should have been told to try was the question whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bonâ-fide* question between the parties as to the right of way over this particular piece of land.—*Roy Omesh Chunder Sen v. Ichhanath Mozumdar*, 21 W. R. 64.

A PREVIOUS sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance to the neighbourhood. No one has a right to corrupt the air of a particular locality by the exercise of a noxious trade simply because at the commencement of the nuisance no person was in a position to be injured by it, and no prescriptive right can be acquired to maintain, and no length of enjoyment can legalize, a public nuisance involving actual danger to the health of the community.—*The Municipal Commissioners for the Suburbs of Calcutta v. Mahomed Ali and another*, 16 W. R. 6; 7 B. L. R. 499.

BEFORE a Magistrate can make an order under s. 133 to remove an obstruction from a path alleged to be a public thoroughfare, he must first, in a proceeding held under s. 147, have come to the conclusion that the path is open to the use of the public. The only functions which a jury appointed under s. 138 can exercise are to consider whether the order made by the Magistrate under s. 133 is reasonable and proper, it being no part of their duty to determine the rights of parties in property. *Held*, therefore, that where a Magistrate, through a mistaken view of the law, ordered the removal of an obstruction on a pathway under s. 133, and had further submitted this order to the consideration of a jury appointed under s. 138 before he had himself come to the conclusion whether such pathway was a public thoroughfare, the only course left open to him under such circumstances was to stay all proceedings initiated under s. 133, and take action under s. 147.—*In re Chunder Nath Sen*, I. L. R., 5 Cal. 875.

IN A prosecution under s. 133, it is necessary to show two things: first, that the act complained of is a nuisance, and, second, that it was committed on a thoroughfare or public place. Where a Deputy Magistrate had treated the slaughtering of cattle as a "nuisance" under s. 133, and ordered its discontinuance within a private enclosure belonging to some Mahomedans, it was held that, though the act complained of might be shocking to the prejudices of Hindus, it could not properly

be regarded as a nuisance, and that, at any rate, the act being done in a private place, and not on a thoroughfare, it could not be dealt with under s. 133. It was also held that the agreement of the accused to refer the matter to a jury, which had given the case against them, in no way deprived them of their legal rights, or affected the fact that the question of the expediency of discontinuing the alleged nuisance, which had been referred to the jury, ought not to have been so referred.—*Muzhur Ali, Raheem Ali, Nuzzur Ali, Budloo, Keramat, and Akrum v. Gundowree Sahoo*, 25 W. R. 72.

Act X., 1872, s. 522. **134.** The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

THE mere non-service personally of a notice to remove a nuisance is not a sufficient ground for the Court to set aside the Magistrate's order, when it appears that the parties did not take the objection before the Magistrate, and that they in fact admitted knowledge of the existence of the notice, and sought to excuse their failure to obey it.—*Hochan v. Elliot*, 5 W. R. 4.

Act X., 1872, s. 523, para. 1. **135.** The person against whom such order is made shall—
 Person to whom order (a) perform, within the time specified in is addressed to obey, the order, the act directed thereby ; or
 (b) appear in accordance with such order, and either show cause or show cause or claim against the same, or apply to the Magistrate by jury. whom it was made to appoint a jury to try whether the same is reasonable and proper.

WHEN the person on whom a notice has been issued applies for a jury, the Magistrate is bound to appoint one, and cannot decide the matter by a local inquiry.—*In re Mothoor Chunder Dass*, 2 Cal. Law Rep. 509.

A PERSON who, on receipt of an order made by a Magistrate under s. 133, declaring the existence of a right of way over such person's lands, demands, under s. 135, the appointment of a jury to try whether such order was reasonable, is not, by such action, estopped from afterwards bringing a suit in a Civil Court seeking to establish his right to the exclusive enjoyment of the same lands.—*Mutty Ram Sahoo v. Mohi Lall Roy*, I. L. R., 6 Cal. 291.

Act X., 1872, s. 525. **136.** If such person does not perform such act, or appear and show cause, or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code ; and the order shall be made absolute.

WHERE a party who had been called upon to show cause within a specified time why an order for the removal of a nuisance should not be passed against him did not appear to show cause within the time specified, but filed his objections after the time specified, and before the case was taken up, it was held that the Magistrate was bound to hear him.—*In re Bistoo Chunder Chuckerbutty*, 10 W. R. 27.

AN order by a Magistrate under s. 133 for the removal of a nuisance does not become absolute until an opportunity is given to the persons affected by it to show cause why the order should not be carried into effect. No order can be made under s. 142 unless there is imminent danger or fear of injury of a serious kind to the public involved in the case ; and where a Magistrate, who had made an order under s. 133, subsequently directed further enquiry to be made, it was held that he must be

considered to have abandoned his proceedings under s. 142, and that he should have proceeded under ss. 136 and 137, instead of fining the party charged under s. 188 of the Penal Code.—*Queen v. Brojendra Lal and others*, 21 W. R. 86.

Procedure where he appears to show cause.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

Act X., 1872,
ss. 523, 527.
Act XI., 1874,
s. 45.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

WHEN, after enquiry, a Magistrate finds that there is no sufficient cause for proceeding under s. 133, he is competent to let the matter drop. As a Court of Revision, the High Court will not enter upon a consideration of the value of the evidence on which the Magistrate decided so to act.—*Shonai Paramanick v. Jogendra Shaha* and another, 1 Cal. Law Rep. 486.

A MAGISTRATE is bound to take evidence when the party appears and shows cause, and submits to the Magistrate's judgment. In such case the penalty prescribed by s. 188 of the Penal Code cannot be enforced. *In re Nimac Churn Dey and others v. Kashi Nath Rakhit and others*, 26 W. R. 7. But where the Magistrate took no evidence, though the party duly appeared and showed cause, the High Court quashed the order.—*In re Mohur Mundir*, 8 Cal. Law Rep. 431.

IN a case in which a Magistrate ordered a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and in which subsequently the Magistrate, on the application of the party charged, appointed a jury under s. 138, it was held that the question the jury should have been told to try was the question whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bond fide* question between the parties as to the right of way over this particular piece of land.—*Roy Omesh Chunder Sen v. Ichannath Mozumdar*, 21 W. R. 64.

Procedure where he claims jury.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

Act X., 1872,
s. 523, para. 2.

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

Act X., 1872,
s. 524, para. 1.

(c) fix a time within which they are to return their verdict.

Act X., 1877,
s. 523, para. 5.

WHERE the foreman of a jury was appointed by the Magistrate, and the remaining members by the parties concerned, it was held that such jury was not properly constituted.—*Reg. v. Hargabind Pal*, 7 B. L. R., App., 57.

WHEN the person on whom a notice has been issued applies for a jury, the Magistrate is bound to appoint one, and cannot decide the matter by a local enquiry.—*In re Mothoor Chunder Dass*, 2 Cal. Law Rep. 509.

WHERE a juror fell ill, and the foreman, without the Magistrate's consent, appointed a new juror, the proceedings of the jury so constituted were set aside as illegal.—*Empress v. Bhoirub Chunder Datta*, 10 Cal. Law Rep. 193.

WHERE the appointment of a juror was cancelled by a Magistrate at the instance of one party, and behind the back of another, it was held that the Magistrate had acted improperly, even though the juror was the Magistrate's own nominee.—*Chunder Nath Sen v. Ramdyal Ghuttuck*, 6 Cal. Law Rep. 379.

IN referring a case regarding a nuisance to arbitrators a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be

done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. Where this is not done, a Magistrate cannot carry out his original order if there is any delay in the submission of the award by the arbitrators.—*In re Shamakant Bundopadhyay*, Petitioner, 14 W. R. 69.

In a case in which a party, on whom an order had been made for abatement of nuisance, applied for the appointment of a jury, the Magistrate appointed the complainant and two of his witnesses to be—the former the foreman, and the latter two of the members of the jury: *Held* that the jury so constituted by the Magistrate was not a proper tribunal, and the proceedings, &c., were accordingly set aside, and the Magistrate directed to appoint a fresh jury.—*Brindaban Dutt v. Dwarka Nath Sein*, 22 W. R. 47.

WHERE a jury appointed by a Magistrate had fully entertained and considered the matter submitted to it, and the individual members of the jury had given in their opinion to the foreman to report to the Magistrate, and the only delay was in the foreman's making the report, it was held that the Magistrate could not appoint a second jury to consider the matter afresh, but ought to have acted on the report of the first jury which had been given in before he made his final order in the matter.—*Sheik Nozummuddy v. Hasim Khan*, 21 W. R. 54.

A MAGISTRATE should exercise his own independent discretion in selecting the members of the jury, and the persons so selected by him should not be nominees of the party interested in upholding the Magistrate's order. In this case, the High Court, sitting as a Court of Revision, set aside the order of the Magistrate appointing to the jury persons who had been appointed by the opposite party, as it held that the error of procedure was a material one, inasmuch as the merits of the case had been thereby affected.—*Rajah Shatyanundo Ghoshal v. Camperdown Pressing Company, Limited*, 21 W. R. 43.

THE Magistrate of a District by notice called on the petitioner to remove a building erected by him, on the ground that it was an unlawful obstruction on a high-road. The petitioner called for a jury, and a jury of five persons was appointed by the Magistrate's successor, three of such persons (including the president) being appointed by the Magistrate, and two by the petitioner; and they were ordered within 15 days to report whether the order for removal was a reasonable and just one. The jurors, not having instructions, differed as to what they were to do, but four of them personally visited the premises, and were unanimous in finding that the building complained of was not on a high-road at all. Five days after the receipt of these reports, the Magistrate ordered the petitioner to pull down the house in 15 days, as the reports of the jurors had not been made within the time prescribed. The petitioner showed cause, but without effect, and the order was repeated, and the Magistrate proceeded to try the petitioner for disobedience of the order. The Sessions Judge, on the application of the petitioner, sent for the proceedings; but the Magistrate wrote questioning the authority of the Sessions Judge to interfere, and, without waiting for a reply, proceeded with the trial of the prisoner for disobedience of an order duly promulgated by a public servant, and sentenced him to 25 days' imprisonment under s. 188 of the Penal Code. His house was also pulled down. The proceedings were ultimately forwarded to the Sessions Judge, whose successor returned them, remarking that nothing appeared to have been done contrary to the law for the removal of nuisances. *Held* (reversing the conviction) that the petitioner had shown abundant reason to satisfy the Magistrate that the order to pull down the house was not "reasonable and proper," and that he was not justified in convicting him for disobedience of an order the legality of which was then under the consideration of an Appellate Court. *See*, Act XVIII. of 1850 would not protect a Magistrate from being sued for damages for the injury occasioned by arbitrary acts of the character of those elicited in this case.—*Reg. v. Dalsukram Haribhai*, 2 Bom. H. C. Rep. 384.

Act X., 1872,
ss. 523, para.
3, 526, para.
1.

139. If the jury, or a majority of the jurors, find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

THE law requires a juryman to exercise his own understanding on the case submitted to him and to decide on evidence, and not to follow blindly the opinion of his fellows. Where one out of three (in a jury of five) depends on the inspection and enquiries of the other two, the verdict of the three is not that of a legal majority, and was held to be void.—*Petambur Jugi v. Nasaruddy*, 25 W. R. 4.

WHERE a jury is appointed to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not, the Magistrate is bound to be guided by the decision of the jury. But where the finding is not quite clear, the Magistrate can call upon the jury to state, in definite terms, whether the order is reasonable and proper or not.—*Reg. v. Poholee Mullick* and another, 12 W. R. 28.

If grounds of objection to the verdict of a jury are brought to the notice of the Magistrate, such as to justify the conclusion that it was not a proper verdict, then he ought to enquire into the validity of those grounds. The objection must be made as specifically as possible, and the objector must pledge himself to establish definitely such facts as would, when proved, suffice to render the verdict invalid and improper.—*Brindabun Chunder Dutt*, 23 W. R. 15.

140. When an order has been made absolute under section 136, Act X., 1872,

Procedure on order being made absolute. section 137, or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code. s. 526, para. 1.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found. Act X., 1872, ss. 525, 526, para. 2.

No suit shall lie in respect of anything done in good faith under this section. Act X., 1872, s. 525, para. 2.

WHERE a party objects to the verdict of a jury, he ought to give the Magistrate reasonable *prima-facie* ground for the opinion either that the jury did not in fact apply a judicial discretion to the case, or that the verdict was such as the jury could not have arrived at by a proper exercise of their discretion upon the materials before them.—*Bindabun Chunder Dutt v. Dwarka Nath Sein*, 23 W. R. 15.

THE concluding clause of this section, though it prevents the Civil Courts from entertaining a suit to restrain a Magistrate from carrying out an order made under this chapter, or a suit for damages against the Magistrate or any other person in carrying out such order in the manner provided by law, does not bar the person against whom such an order has been carried into effect from instituting a suit to prove that land declared by the Magistrate to be public is his private property.—*Lalji Ukheda v. Jowba Dowba*, 8 Bom. H. C. Rep. 94, A. C. J.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if, from any cause, the jury

Procedure on failure to appoint jury or omission to return verdict. appointed do not return their verdict within the time fixed, or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass Act X., 1872, s. 523, para. 4.

such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

WHERE a jury sent in their report after the prescribed time, and the Magistrate refused to act upon it, the High Court held that the Magistrate, had acted improperly. In so holding, the High Court remarked "that the Legislature evidently contemplated that considerations of justice and equity should form the rule of a Magistrate's conduct in dealing with alleged nuisances or unlawful obstruction." *Reg. v. Dalsukram Haribhai*, 2 Bom. H. C. Rep. 384.

IN referring a case regarding a nuisance to arbitrators a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. Where this is not done, a Magistrate cannot carry out his original order if there is any delay in the submission of the award by the arbitrators.—*In re Shamakant Bundopadhyia*, Petitioner, 14 W. R. 69.

Act X., 1872,
s. 528.

142. If a Magistrate making an order under section 133 considers Injunction pending in- that immediate measures should be taken to quiry. prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything does in good faith by a Magistrate under this section.

This section authorizes the Magistrate to take immediate measures to prevent imminent danger pending the enquiry of a jury, but not where no jury has been appointed, and after the danger has passed away.—*Reg. v. Rajah Indoo Bhoosun Deb Roy*, 1 W. R. 8.

AN order by a Magistrate under s. 133 for the removal of a nuisance does not become absolute until an opportunity is given to the persons affected by it to show cause why the order should not be carried into effect. No order can be made under s. 142 unless there is imminent danger or fear of injury of a serious kind to the public involved in the case; and where a Magistrate, who had made an order under s. 133, subsequently directed further enquiry to be made, it was held that he must be considered to have abandoned his proceedings under s. 142, and that he should have proceeded under ss. 136 and 137, instead of fining the party charged under s. 188 of the Penal Code.—*Queen v. Brojendra Lall and others*, 21 W. R. 86.

Act X., 1872,
s. 519.
Penal Code,
s. 291.

143. A District Magistrate or Sub-divisional Magistrate, or any Magistrate may prohibit other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

DISOBEDIENCE to an injunction against repeating or continuing a public nuisance is punishable under s. 291, Penal Code.

BEFORE a person can be legally punished for refusal to remove and re-construct roof-drains, evidence ought to be taken whether the party has disobeyed the Magistrate's order, and that such disobedience has produced, or is likely to produce, harm.—*Reg. v. Shabuckram Bukoolee and another*, 2 W. R. 32.

A CIVIL Court has no jurisdiction to entertain a suit brought to question an order made by a Magistrate to discontinue a nuisance. In this case, where a Magistrate made an order for the removal of a shed as being an obstruction to a thoroughfare, and the owner of the shed, on disobeying that order, was fined under s. 291 of the Penal Code, it was held that no suit would lie in the Civil Court to establish the owner's right to keep up the shed.—*Bakas Ram Shapoo v. Chunmun Ram*, 7 W. R. 11.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

144 In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray.

An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself, or any Magistrate subordinate to him, or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

DISOBEDIENCE of an order under this section is punishable by s. 188, Penal Code.

An order in writing is necessary to sustain a charge under s. 188, Penal Code.—*Pitanbur Dey*, 17 W. R. 57.

S. 144 does not apply to a private dispute between two parties relative to a path.—*Nilkomul Mukhopadhyaya v. Anund Chunder Lushkur*, 18 W. R. 6.

THE power of issuing orders to prevent breaches of the peace, &c., conferred on a Magistrate by s. 144, extends only to immoveable property.—*Reg. v. Goluck Chunder Gooloo*, 12 W. R. 38.

An order under s. 144 cannot be directed to an owner of property who had sublet it to others, and who was not, in consequence, in actual possession or management of it.—*Empress v. Sreenath Sein*, 1 Shome's Rep. 30.

Act X., 1872,
s. 518, with
Expl. I. 1
O'Kin. 58.

Act X., 1872,
s. 518:
1 Ben. Ap. Cr.,
20.

Act X., 1872,
s. 518, Expl.
II.
Act X., 1872,
s. 518, Expl.
III.

As to disobedience to such orders, see 188, P. C.

Act X., 1872,
s. 518, Expl.
IV.

5 Cal. 7.
4 Cal. 410.

WHERE a zamindár established haunts on his own estates, and held them on certain days most convenient to him, it was held that the Magistrate had no power to interfere.—*Sheeb Chunder Bhuttacharjee v. Saadut Ally Khan*, 4 W. R. 12. But see *Bykuntram Shaha Roy v. Meajan*, (18 W. R. 47) and other similar cases, *infra*.

S. 144 does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur.—*Radha Kishore v. Girdharee Sahee*, 13 W. R. 19.

A MAGISTRATE cannot, in general terms, forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance.—*Ram Chunder Geer Gossain* and another, *Petitioners*, 6 W. R. 40.

THE High Court cannot interfere, under 24 and 25 Vic., c. 104, s. 15, with orders duly passed by a Magistrate under s. 144 of this Code.—*In re Chundra Nath Sen* and another, 1. L. R., 2 Cal. 293 (F.B.). But see *Gopi Mohun Mullick v. Taramoni Chowdhurani*, 1. L. R., 5 Cal. 7, *infra*.

A MAGISTRATE'S jurisdiction under s. 144 to direct the removal of an obstruction is confined to cases where there has been annoyance or injury to any person lawfully employed, or danger to human life, health, or safety, or where there is a probability of a riot or affray.—*Sreenath Dutt v. Unnoda Churn Dutt*, 23 W. R. 34.

A MAGISTRATE has no power to issue an order which is by its very nature irrevocable. All that he has power to compel the owner of property to do is to take certain order with it. Such power does not extend to an order to cut down a large quantity of trees.—*Uttam Chunder Chatterjee v. Ram Chunder Chatterjee*, 13 W. R. 72.

THIS section does not authorize a Magistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the banks on the ground that they are an obstruction to the public in the lawful enjoyment of the river, and that the stopping of the water interferes with the health of the public.—*In re Gholam Durbesh*, 10 W. R. 36 ; 1 B. L. R., S. N., 27.

A MAGISTRATE or other officer exercising the powers of a Magistrate is legally competent to issue an order prohibiting a landholder from holding a haunt on any particular spot on his estate on particular days, on the ground that such an order is likely to prevent a riot or an affray.—*Bykuntram Shaha Roy* and others *v. Meajan*, 18 W. R. 47 ; 10 B. L. R. 434 (F. B.).

THE existence of the circumstances mentioned in s. 144 is a condition precedent to the action of a Magistrate under that section. If the matter is one which cannot properly be dealt with under s. 144, it does not fall within that section, and, being a judicial proceeding, is not protected from the action of a Court of Revision.—*In re Kisto Mohun Bysack*, 1 Cal. Law Rep. 58.

THE fact that an order of the Magistrate is not a judicial proceeding, and therefore not one which the High Court can revise under the Code of Criminal Procedure, does not have the effect of removing the Magistrate from the general superintendence of that Court under s. 15 of its Charter Act.—*Chunder Coomar Roy* and others *v. Omesh Chunder Mojoomdar* and others, 22 W. R. 78.

To support a conviction under s. 188, Penal Code, there must be evidence that the order has been promulgated by a public servant lawfully empowered to promulgate such order. S. 144 of the Criminal Procedure Code, which relates to local nuisances, has no application to a case like this, which refers to the collection of market dues.—*Queen v. Sobun Singh* and others, 23 W. R. 57.

WHERE special damage is caused to any person by an obstruction placed upon a public thoroughfare, he is entitled to bring an action in the Civil Court for the purpose of having the nuisance abated, notwithstanding the provisions of s. 144 and other sections relating to summary proceedings before a Magistrate, and notwithstanding that he may be entitled to damages.—*Raj Koomar Singh v. Sahabzada Roy*, 1. L. R., 3 Cal. 20.

IN a case of a dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power under s. 144 to make an order that no rents should be collected until such time as the right and title of both parties should have

been established by order of a competent Court, and a conviction under s. 188 of the Penal Code for disobeying such an order cannot be sustained.—*Prosunno Coomarr Chatterjee v. Empress*, 8 Cal. Law Rep. 230.

WHERE a Magistrate made an order under s. 144, directing one of two rival haut-proprietors to remove his haut to such a distance as to render it useless for the purposes for which it was established, it was held that the order came within the purview of the Full Bench decision in *Gopi Mohun Mullick v. Taramoni Chowdhrahi*, I. L. R. 5 Cal. 7, and might be set aside as in excess of jurisdiction.—*Sharut Chunder Banerjee and others v. Bamachurn Mookerjee*, 4 Cal. Law Rep. 410.

The order contemplated by s. 144 is a particular and specific order addressed to a particular person or particular persons to do or abstain from a particular act or particular acts. That section does not empower a Magistrate to pass a general order to persons not to allow their cattle or horses to run at large on the public roads, nor can such an order be passed under Act III. of 1857, which applies only to injury done by cattle to crops, &c., and to the sides of public roads and embankments.—*Queen v. Amcernddeen and others*, 12 W. R. 36; 3 B. L. R. 45; 6 B. L. R. 78, S. N.

WHERE an executive officer makes an order or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the execution of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not.—In the matter of the petition of *Surjanarain Dass and others*; *Empress v. Surjanarain Dass and others*, I. L. R., 6 Cal. 88.

THE temple of Pandharpur, a public temple, is visited at certain periods of the year by a large concourse of pilgrims. With a view to prevent the dangers arising from overcrowding, and to improve the ventilation, the Magistrate, F. P., by a written order, directed the hereditary priests of the temple to widen and heighten the doorway. *Held* that such order was legal under the above section. *Seemle*, that the case would have been the same had the temple been private property; and also that the power of the Magistrate to issue orders under the section in question is entirely discretionary.—*Reg. v. Ramchandra Eknath et al.*, 6 Bom. H. C. Rep. 36.

IN a case in which the Magistrate passed an order under s. 144 for closing a haut on the ground that it was only a mile apart from another haut, and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, s. 518 applying only when a breach of the peace was imminent. *Held* that the order could be made in all cases upon such information as satisfied the Magistrate, and as the order was one which the Magistrate had power to make, and was not contrary to law, the High Court could not, under s. 439, set it aside. Orders made under s. 144 are not judicial proceedings, and therefore are not within s. 439.—*Bhola Nath Bose v. Komuruddin*, 20 W. R. 53.

Per AINSLIE, J.—In dealing with the civil rights of a subject under s. 144, it is incumbent on the Magistrate to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient enquiry, as to whether the act prohibited as likely to cause a breach of the peace is within, or is in excess of, the legal right of the person forbidden to do it; and, if necessary, to deal with the case under the other provisions of the Criminal Procedure Code, which enable him to meet cases of probable breach of the peace. *Per Broughton, J.*—Where an order on the face of it appears to have been made without jurisdiction, no subsequent explanation can make it good.—*Abdool and others v. Luckynarain Mundul and others*, I. L. R., 5 Cal. 132.

A MAGISTRATE is not empowered to pass an order under s. 144 which has more than a temporary operation; the grant of what is in effect an order for a perpetual injunction is entirely beyond his powers. When a plaintiff alleged that he had held a haut on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival haut on these days, and prevented persons from attending the plaintiff's haut; that this led to disturbances which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his haut on the said days; and that the plaintiff suffered loss and damage in consequence: *Held* that, assuming

these facts to be true, the plaintiff was entitled to a decree declaring, as against the defendant, that the plaintiff had a right to hold his hant on Tuesdays and Fridays.—Gopi Mohun Mullick v. Taramoni Chowdhurani, I. L. R., 5 Cal. 7.

THE extraordinary powers conferred on the High Court by the Letters Patent, s. 15, extend to the revising of orders passed under the Code of Criminal Procedure, s. 144. When a Magistrate makes an order under this section, on the ground that he has received information, and is satisfied with it, no interference is possible; but when he states the nature of the information, the High Court can see whether such information justifies the order made. Before a prohibitory order under s. 144 can be made, there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or affray. After summoning a person to show cause why he should not enter into a bond to keep the peace, the Magistrate cannot bind over that person until he adjudicates on evidence before him that such person is likely to commit a breach of the peace.—Goshain Luchmun Pershad Pooree and others v. Pohoop Narain Pooree, 24 W. R. 30.

THE operation of s. 144 is confined to cases where, in the opinion of the Magistrate, the delay which would be caused by adopting a different procedure from that specified in the section would occasion a greater evil than that suffered by the person upon whom the order is made, or would defeat the intention of this chapter. Where a Magistrate, without hearing the petitioner or giving him an opportunity of being heard, and simply upon the foundation of a police-officer's report, directed the petitioner to abstain from holding a hant upon his land on a certain day, because another party had long been accustomed to hold a hant upon his land adjacent to the petitioner's hant on the day following that in which the petitioner held his hant, it was held that his order passed under s. 144 was *ultra vires*, the police-officer's report being vague and insufficient, and the private interest of this kind not affording a ground for making an order under s. 144, or any other order under the Criminal Procedure Code.—Bance Madhub Ghose v. Wooma Nath Roy Chowdhry, 21 W. R. 26.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Act X., 1872,
s. 530.
3 Cal. 552.

145. Whenever a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims, as respects the fact of actual possession of the subject of dispute.

I. L. R., 3
Cal. 320.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

If the Magistrate decides that one of the parties is then in such 1 O'Kin. 136.
 Party in possession to possession of the said subject, he shall issue an 2 O'Kin. 67,
 retain possession until order declaring such party to be entitled to re- 264.
 legally evicted, tain possession thereof until evicted therefrom See 6 Cal.
 in due course of law, and forbidding all disturbance of such possession 206.
 until such eviction.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

A POLICE-REPORT is a sufficient information on which a Magistrate may take action where breach of the peace is apprehended.—Reg. v. Ramchundra Roy, 21 W. R. 28.

WHERE a Magistrate decided the question of possession upon evidence not taken before him, but taken before his predecessor, his proceedings were set aside by the High Court.—Guruchurn Sen v. Kalinath Dass, 23 W. R. 62.

IN a land-dispute between two rival zamindárs, constructive possession through intermediate holders (thikádárs) to whom the raiyats pay rents, is not such possession as is contemplated by s. 145.—Empress v. Thakur Dayal Singh and another, 1. L. R., 3 Cal. 320.

S. 145 does not apply to a dispute arising out of one joint owner of a parcel of land erecting on it an edifice without the consent of another joint owner.—Empress on the prosecution of Dinanath Ghatak v. Raj Kumar Singh and another, 1. L. R., 3 Cal. 573.

THE preliminaries of s. 145 were held to be substantially observed when an inquiry had already been set on foot under ch. viii., and the Magistrate at the same time came to a decision under this section that a certain party was in possession, and passed an order accordingly for maintaining the same.—Duriyo Sing v. Uma Persad, 24 W. R. 16.

IN a case of disputed possession likely to lead to a breach of the peace, the Magistrate, instead of merely binding down the parties to keep the peace, and declining to interfere further, is bound to dispose of the question of possession.—Reg. v. Anund Nath Roy, 4 W. R. 12. The present section has made this clear by inserting the words "and decide."

THE possession given by an amin in a *butwára* proceeding is simply one of ownership, and not of occupancy. Such possession cannot, therefore, in proceedings under s. 145, be held to oust tenants occupying lands previously to such delivery of possession.—In the matter of the petition of Mackenzie v. Shere Bahadur Sahi, 1. L. R., 4 Cal. 378.

ALTHOUGH no particular mode of giving notice, calling upon parties to act under this section before the Magistrate, has been provided, yet the language of the section indicates that the notice shall be addressed to known individuals, and not in the form of a public proclamation or citation.—In the matter of the petition of Kunund Narayan Bhoop, 1. L. R., 4 Cal. 650.

OUSTER by one person of another lawfully in possession of property confers no rights on the former which can be recognized in proceedings taken under s. 145. The Court should refer back to a time previous to the quarrel when such possession was peacefully enjoyed by one or other of the disputants.—In the matter of the petition of Mahes Chunder Khan, 1. L. R., 4 Cal. 417.

A REGULAR proceeding should be recorded previous to a case of disputed possession of land being adjudicated under this section. The final order should only declare the party whom the Magistrate may find to be in possession to be entitled to remain in possession. To order the police to give possession is irregular.—Queen v. Grigamonee, 2 Rev. Jud. and Pol. Jour. 37, Jan. 30, 1864.

A MAMLATDAR'S finding as to the point of actual possession is not conclusive. A Magistrate's finding is so under s. 145. Possession actually taken by a person having a right to it is not the less effective, as perfecting his title, by reason of an irregularity in taking it. Subsequent ouster will give rise to a new cause of action.—*Lillu bin Rághushet* (Plaintiff), Appellant, *v.* Annáji Parashráam (Defendant), Respondent, 1. L. R., 5 Bom. 387.

By actual possession is meant, not possession by putting up a tent upon the land, nor merely bodily possession, but the possession of a master by his servant, or the possession of a landlord by his immediate tenant, *i. e.*, the person who pays rent to him (not, as in this case, the possession of a superior landlord to whom the occupier of the land did not pay his rent), or the possession of the person who has the property in the land by the usufructuary.—*Sutherland and another v. Crowdy*, 18 W. R. 11; 9 B. L. R. 229.

In order to justify a Magistrate in interfering under s. 145, it is necessary that he should be satisfied that there exists a dispute concerning land which is *likely to induce a breach of the peace*,—*i. e.*, there must be a reasonable apprehension that a disturbance of the peace is likely to occur rendering it necessary for him to take immediate steps to prevent it, and not merely that it is *probable* a breach of the peace *may* occur if proceedings under s. 145 be not taken.—*Damodur Biddiyadhur Mohapatro v. Syamanund Dey*, 1. L. R., 7 Cal. 385.

In a case of dispute regarding land of a considerable area in which both parties contended that they held possession of the area through the means of raiyats, it was held that the Magistrate, instead of making an order under s. 145 that the land should remain in the possession of one of the parties until the decision of a competent Civil Court, should have proceeded to consider the question which party was in possession of the constituent portions of the land, piece by piece, by the hands of his raiyats.—*Mudhoosoodun Shaha and another v. Bejoy Gobind Chowdhry and others*, 21 W. R. 55.

THE power given to a Magistrate to make a binding declaration as to the possession of any property is an exceptional one, and s. 145 limits the exercise of that power to cases in which the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists; it is this likelihood, with the consequent necessity for immediate action, which alone warrants action by the Magistrate. The grounds for his belief as to the existence of a likelihood of a breach of the peace must be recorded.—In the matter of the petition of Kunund Narayan Bhoop, 1. L. R., 4 Cal. 650.

UNDER the provisions of s. 145, the Magistrate should specify the nature of the information received by him, and state the principal facts which by the exercise of a judicial discretion he derives therefrom, and which, in his judgment, constitute grounds for believing that a dispute concerning certain land exists which is likely to induce a breach of the peace; and the rubakári which s. 145 prescribes should plainly set out, without reference to any other documents at all, the actual facts which constituted the ground for such belief on the part of the Magistrate.—*Kishorree Mohun Roy and others*, Petitioners, 19 W. R. 10.

WHERE a dispute arises as to the right to the possession of lands and buildings, a Magistrate, if he considers a collision between the parties and a serious breach of the peace imminent, may properly proceed under ch. xi., instead of ch. xii. If the Magistrate had jurisdiction, the proceedings, not being judicial, cannot be revised by the High Court. An order to abstain from interference with a temple and its property is an order to abstain from a "certain act" within the meaning of s. 114.—*Elavárisu Vanamánalai Rámánuja Jeeyarsvámi* (Petitioner), *v.* Vanamálai Rámánuja Jeeyar (Counter-Petitioner), 1. L. R., 3 Mad. 354.

WHERE a dispute between parties is not concerning land or its boundaries, or concerning houses, water, fishery, or produce of land, but simply as to what collections one of the parties has made, and what rents he is entitled to collect under a decree of Court, the case does not come under the provisions of s. 145, but under the ruling in 18 W. R. pp. 35, 36. Where a case falls under s. 145, and the Magistrate proceeds on the basis of a police-report which does not state that there was any collection of men on the part of the opposite party, the proceeding is not a sufficient proceeding under that section.—*Puddomonee Dassee v. Juggodumba Dassee*, 25 W. R. 2.

A DISPUTE between a zamindár and his lessee as to the right to receive rent is not within the meaning of s. 145.—*Mad. H. C. Pro.*, Feb. 11, 1873; *Weir*, p. 27.

A MAGISTRATE is quite justified in preventing a person from entering upon land in the possession of another.—*Reg. v. Saadut Khan and Fugul Ali*, 3 W. R. 19.

IN deciding a dispute as to a right of water, the Magistrate must follow strictly the course pointed out by this section.—*Queen v. Ramnath and others*, 7 W. R. 45.

BEFORE A Magistrate can pass any order regarding possession of disputed land, he must observe the forms prescribed by s. 145.—*Sabhee Sing and others*, 6 W. R. 50.

THE report of the police is not evidence that a dispute likely to induce a breach of the peace exists.—*Bhudressory Chowdhrae v. Goburdhun Majhee* on behalf of *Roy Pertab Chunder Burrooah*, 16 W. R. 17; 7 B. L. R. 329.

IN the absence of evidence that an order under s. 145 was, in fact, directed to the accused, he cannot legally be convicted under s. 188 of the Penal Code for disobeying such order.—*In re Nobokishore Chuckerbutty*, 7 Cal. Law Rep. 291.

THE possession to be determined under s. 145 is possession at the time the dispute arose, i.e., at the time the police reported that a breach of the peace was likely to take place.—*Rakhal Dass Sing and another v. Rajah Sheo Pershad Singh*, 24 W. R. 73.

WHERE a dispute exists about land, which is likely to induce a breach of the peace without such breach being imminent, the Magistrate should proceed under s. 145, and not under s. 107.—*Queen v. Mohesh Chunder Roy and others*, 24 W. R. 67.

A PERSON commits mischief if he cuts trees on land which he claims, but of which possession after execution-sale has been legally made over to another person, without any objection or formal intervention on his part.—*Sonai Sardar v. Bukhtar Sardar*, 25 W. R. 46.

WHEN in a case under this section a Magistrate has taken any evidence, he is not justified in refusing to proceed with the case because the parties neglected to file written statements on the day fixed for filing the statements.—*In re Goluck Chunder Mytee*, 11 W. R. 9.

THE omission to record a preliminary proceeding to the effect that a dispute likely to induce a breach of the peace exists, will not invalidate an order passed, unless it can be shown that the party was prejudiced by the omission.—*Mad. H. C. Pro.*, Aug. 9, 1870; *Weir*, p. 26.

THE mere service of a notice upon a mofussil naib who takes no steps whatever to consult his employer, or act under her directions, is not such a notice as is contemplated by s. 145 in a case of dispute regarding possession of land.—*Ramrunginee Dasi v. Gooru Dass Roy*, 17 W. R. 9.

IN cases of disputes concerning the possession of land under s. 145, the Magistrate has no jurisdiction to interfere unless he is first satisfied of the existence of a dispute likely to cause a breach of the peace.—*Dewan Elihee Newoz Khan and Aftabonissa v. Suburunissa*, 5 W. R. 14 (F. B.).

WHERE a Magistrate thinks that the acts of the accused are likely to lead to a breach of the peace, and their statements as to possession of land are false, he may proceed to try whether the accused should not be charged with unlawful assembly.—*Emam Ali v. Sudderuddeen and others*, 9 W. R. 18.

WHERE a Magistrate, proceeding under s. 145, decides on the evidence in favour of a party as being in possession of the disputed land, the High Court cannot reconsider the Magistrate's decision, and decide which party is in actual possession.—*Bharut Chunder Bose v. Dwarkanath Chowdhry*, 15 W. R. 86.

WHERE a decree has been passed by a Civil Court determining the rights of the parties to a suit to disputed land, it is a Magistrate's duty to uphold that decree, and he cannot, as between such parties, proceed under s. 145 to decide afresh upon the question of possession.—*Bholanath Ghose v. Mothur Munde*, 7 Cal. Law Rep. 516.

IN a case of disputed possession of land, the Magistrate should record the proceedings required by s. 145, and look to possession, not to right, i.e. maintaining in possession the party in possession, and forbidding disturbance of possession. Magistrates should not take up judicial works on Sundays.—*Grijamonce v. Issur Chunder*, W. R. S. p. 2.

UNDER s. 145 a Magistrate has power to decide the question of contested possession between two zamindars who are not in immediate possession of the land which is the subject of dispute, but claim the right to collect rents from tenants in actual occupation of the said land.—*Nobin Chunder Coondoo v. Jogendronath Bhuttacharjee*, 25 W. R. 18.

IN a dispute concerning land, the Magistrate, having found one party to be in possession had no power to give the opposite party, found not to be in possession, permission to cultivate the disputed land pending the decision of any possessory action he might bring.—*Shib Churn Chuckerbutty v. Ishen Chunder Chuckerbutty*, 18 W. R. 27.

A CRIMINAL Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought, the procedure to be adopted in such cases being that provided in chapter 19 of the Civil Procedure Code.—*Pryag Singh and another v. Fazool Hossein and others*, 6 Cal. Law Rep. 206.

THERE being no present danger of a breach of the peace, the fact that such a breach is likely to take place at a future time will not justify a Magistrate in making an order under s. 145. The duty of making an enquiry under s. 148 should be deputed to a Magistrate, not a Kanungo.—*Umachurn Santra v. Benimadhab Roy*, 7 Cal. Law Rep. 352.

A MERE local enquiry and statements of parties not on oath are not sufficient data on which a Magistrate can decide under s. 145 what party is in possession of land with regard to which a breach of the peace is apprehended.—*Government v. Kali Chundro Shah*, 1st Party, and *Mohima Runjun Roy Chowdhry*, 2nd Party, 16 W. R. 13; 7 B. L. R. 322.

TO SATISFY the requirements of s. 145, a Magistrate must himself enquire into the likelihood of a breach of the peace happening, and must come to a judicial decision upon it; and in conducting the subsequent investigation, he must *examine* the witnesses whom the parties have tendered.—*Mussamat Anundee Kooer v. Ranee Soonat Kooer*, 9 W. R. 64.

TO give a Magistrate jurisdiction to make an order under s. 145, he must first be satisfied that a dispute likely to induce a breach of the peace exists, and he must record the grounds of his being so satisfied. The Magistrate should be careful not to interfere in cases which are of a purely civil nature.—*Mad. H. C. Pro.*, Jan. 4, and May 15, 1869; *Weir*, p. 26.

A MAGISTRATE ought not to interfere with the execution of a decree of the Civil Court. If called in to interfere at all because he is apprehensive of a breach of the peace, he should maintain in possession the person who has been actually put in possession by a decree of the Civil Court.—*Shama Soondery Debia v. Messrs. Jardine, Skinner and Co.*, 6 W. R. 10.

S. 145 refers only to disputes concerning land, but not to a dispute as to the right to collect the rents of a joint undivided estate in a certain proportion. The latter must be dealt with under Circular Order No. 10 of 18th April 1863, and s. 26, Regulation V. of 1812, as amended by Regulation V. of 1827.—*Ramrungle Dasse v. Gooroodass Roy*, 18 W. R. 36.

WHERE there is a dispute likely to lead to a breach of the peace concerning land, and proceedings are recorded and had under s. 145, no order should be made against one person who is acting as the servant of another person who claims to have possession of the land, unless the other persons are made a party to the proceedings.—*In re Jitbahan v. Bansrup Dhoi*, 6 Cal. Law Rep. 193.

THE possession regarding which parties are required to give proof in a case under s. 145 relating to a dispute for land in respect of which a breach of the peace is apprehended, is possession at the time the proceedings are instituted by the Magistrate, and not possession at the time the Magistrate comes to his decision.—*Pirtheram Chowdhry, Rai Bahadoor, Petitioner*, 20 W. R. 51.

A MAGISTRATE has no power to decide a question of possession until he has recorded a proceeding under s. 318 of the Code of 1861 (that is, an order in writing under s. 145 of the present Code), stating the grounds of his being satisfied that the

dispute for possession is likely to induce a breach of the peace.—*In re Kashi Kishor Roy, 1st Party, v. Tarini Kant Lahori, 2nd Party, 3 B. L. R. 76.*

A MAGISTRATE cannot, under s. 145, order that a person be kept in possession until he has reaped the crop standing on the ground, and then that he shall give way to another. When there have been pending disputes in the Courts, he should determine who was in peaceable possession when they commenced.—*Bunwari Lall Misser and others v. Raja Radha Pershad Singh, 1 Cal. Law Rep. 136.*

A MAGISTRATE is not competent to interfere under s. 145 with the execution of a decree of the Civil Court. When a Civil Court decree has been passed regarding the whole or any portion of disputed land, it is the Magistrate's duty to maintain that decree, and he cannot again institute, under s. 145, proceedings regarding the land covered by it.—*Rai Mohun Roy and others v. J. P. Wise, 16 W. R. 24.*

THERE is nothing in the law which enjoins the serving of notice upon all the co-sharers in an estate which may, in some shape or other, form the subject of a litigation under s. 145. The only parties entitled to notice are those concerned in the dispute which is likely to induce a breach of the peace.—*Gobind Chunder Ghose and another v. Anundo Chunder Sircar and another, 18 W. R. 54; 9 B. L. R. 39.*

Two investigations under s. 145 were before a Magistrate, who, after deciding one of the cases, remarked on the other that, because the lands adjoined, he had taken the evidence in the two cases together, and found it unnecessary to continue the enquiry further. *Held* that the parties kept out of possession were entitled to a full enquiry.—*Messrs. Watson & Co., 1st Party, v. Ramee Surnomoyee, 2nd Party, 8 W. R. 63.*

WHERE an order under s. 145 was made between A on the one side, and B and the then tenants of B on the other, declaring that A was in possession of the property in dispute, it was held that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question.—*In re Gopal Burnawar, 3 B. L. R. 13.*

THE object of s. 145 is to prevent a breach of the peace by retaining in possession the party already there, until such time as the Civil Court can pronounce on the two conflicting claims. When a Civil Court decree is once passed, the right as between the litigants is decided, and there is no more place for a summary order which proceeds, not upon title, but on mere possession.—*Raneegunge Coal Association v. Hem Lall Ghatwal, 24 W. R. 17.*

THE holding of an enquiry under chapter 12 is a matter entirely within the discretion of the Magistrate of the district or of a division of a district, and the High Court has no authority to require him to proceed under that chapter. The taking of security for keeping the peace is also a matter within the discretion of the Magistrate, provided that he has materials upon which to proceed.—*Kali Prosunno Roy, Petitioner, 23 W. R. 58.*

A DEPUTY Magistrate's order awarding absolute possession of the land to the plaintiff was quashed—(1) because the Deputy Magistrate was bound under s. 145 to enquire into the fact of possession and decide accordingly, and according to his own statement the possession was found in the defendant; and (2) because the plaintiff claimed only a right of way over the land, and not possession of it.—*Reg. v. Sager Mahomed and others, 1 W. R. 25.*

WHERE an inquiry had already been set on foot under chapter 8, and the Magistrate at the same time came to a decision under s. 145 that a certain party was in possession, and passed an order maintaining him in possession, it was held that although no particular proceeding was recorded under s. 145, yet the preliminaries therein prescribed had been substantially complied with.—*Duria Singh and others v. Uma Proshad and another, 24 W. R. 16.*

ON the death of one of the persons concerned in a matter under s. 145, just before those proceedings terminated in favour of that person and another, though it would be more regular for the Magistrate to postpone the proceedings and make his representative a party in his place, the proceedings are not necessarily bad, since the death has prejudiced no one.—*Ramee Anondmoyee Dabee, 1st Party, and Luchmon Pershad Gorga, 2nd Party, 2 Cal. Law Rep. 264.*

A MAGISTRATE cannot proceed under s. 145 in a case of dispute arising out of a right of succession to a muth and its appurtenances, but should apply to the Judge under the provisions of Act XIX. of 1841 to appoint a curator, or make some order with regard to the property, till the right of succession is determined. The grant of a certificate under Act XXVII. of 1860 does not decide the title to such land.—*Queen v. Sreeputt Giri Gossain*, 11 W. R. 23 ; 2 B. L. R. 27.

A MAGISTRATE has no jurisdiction under s. 145, unless the dispute is as to the fact of actual possession of land, crops, &c. Constructive possession through tenants is not actual possession for the purposes of this section. Where there are sufficient grounds for apprehending a dispute in regard to lands or crops, other than a dispute as to possession, the procedure prescribed for security to keep the peace in ch. xi. may be followed.—*Mad. H. C. Pro.*, July 13, 1868 ; *Weir*, pp. 26, 27.

WHERE each of two parties claimed the same share of certain property as a whole estate, neither alleging that the other was joint with him in any way, and the Magistrate, without reference to the right of possession, went into the question of who was in possession, and maintained the possession of the party found in possession, the High Court held that the case fell under s. 145, and saw no necessity to interfere with the decision.—*Byjnath Sahoo v. Rugoonath Pershad*, 25 W. R. 16.

WHERE the proceeding recorded by a Magistrate under s. 145 is based on materials which do not disclose sufficient ground for considering that a breach of the peace is imminent, an order calling upon the parties concerned in the dispute to attend in Court, and give in a written statement of their respective claims, in respect of the fact of actual possession of the subject of dispute, may be set aside as made without jurisdiction.—*Chunder Madhab Ghose v. Juggut Chunder Sen*, 4 Cal. Law Rep. 483.

IN investigating a case of dispute as to land between two parties, a Magistrate found that one party was in possession, but there being a charge against both parties of rioting under s. 147 of the Penal Code, he punished both parties. *Held* that the party in possession were protected by s. 104 of the Penal Code in maintaining their possession, and the punishment inflicted on them was accordingly remitted.—*Toolsee Singh, Thakoor Singh, and others*, Reference in the case of, 10 W. R. 64 ; 2 B. L. R. 16.

S. 145 contemplates disputes between owners as well as occupiers. *Per Jackson, J.*—Where a zamindar has let his lands in farm, he, his farmers, and the occupying raiyats, are all, in their degree, concerned in any dispute as to possession which may arise, and they ought to be maintained in possession of the interests which they severally enjoy. *Empress v. Thakoor Doyal Singh*, I. L. R., 3 Cal. 320, commented upon as having gone too far.—*Harak Narain Singh v. Luchmi Bux Roy*, 5 Cal. Law Rep. 287.

THE omission of a Magistrate to record a proceeding in case of disputed possession of land under s. 530 of the Code of 1872 (that is, an order in writing under s. 154 of the present Code) is not a mere informality in procedure, but renders the whole of the Magistrate's proceedings illegal. Where the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other with reference to the point of possession.—*Harvey v. Brice*, 4 W. R. 26.

WHEN a person summoned to answer to a charge of criminal trespass appeared and filed a written statement, and the Magistrate proceeded accordingly without recording a proceeding under s. 530 of the Code of 1872 (that is, an order in writing under s. 145 of the present Code), it was held that the irregularity was covered by s. 283 of the Code of 1872 (or s. 537 of the present Code), the rule therein laid down being intended to extend to all proceedings before Magistrates.—*Gour Mohun Majee v. Doolubh Majee*, 22 W. R. 81.

IN a proceeding under s. 145, the Magistrate must decide the fact of possession on evidence taken by himself, and not according to the result of a local inquiry made under s. 148, unless the parties have consented to be bound thereby, *Per Prinsep, J.*—The local inquiry referred to in s. 148 should be restricted solely to some question relating to the features of the property about which the dispute has arisen, and should not be directed to any matter which can be proved before the Magistrate by oral evidence.—*In re Boikunt Kumar and others*, 3 Cal. Law Rep. 134.

A CERTIFICATE under Act XXVII. of 1860 only authorizes the holder thereof to collect debts due to the estate of a deceased person, but does not entitle him to recover or to take possession of any property belonging to the deceased from any person who may be in possession (whether wrongful or rightful) of that property. The Magistrate ought to maintain the person in possession, and leave the other party to bring a suit in the Civil Court to prove his title to the property independently of the certificate.—*Seetaram Sahoo v. Roy Sheo Gholam Sahoo Bahadoor*, 18 W. R. 34.

THERE are a number of conflicting rulings of the High Courts in the three Presidencies as to whether a Magistrate has power to restore to possession a person who has recently been wrongfully dispossessed of immoveable property. Section 522 of this Code, which runs as follows, sets the question at rest: "Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same."

THE decision of the Deputy Magistrate was quashed—(1) because the property in dispute being *ijmali*, he had no jurisdiction to try the dispute under s. 145, but ought to have proceeded in the manner laid down in Circular Order No. 10, dated 16th April 1863; and (2) because a portion of the disputed *julkur* being situated within the District of Bakarganj, the Deputy Magistrate of Faridpur had no jurisdiction with reference to that portion of the *julkur* which was admittedly not within the limits of his jurisdiction.—*Goluck Chunder Roy and others v. Raj Mohun Bose and others*, 17 W. R. 33.

IN A case of dispute concerning a right of way, the Magistrate, instead of deciding against the complainant on the ground that he already has another way of approach to his own house, ought to enquire whether or not the new road has been in the use and occupation of the complainant, and, if so, to retain him in it, leaving the owner of the land to determine the question of right to the easement in the Civil Court. Section 147 does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a right of way.—*Queen v. Troyluckho Nath Sircar*, 2 W. R. 64.

IN A case of disputed possession of land it was held that the Magistrate was wrong in not recording a sufficient proceeding under s. 318 of the Code of 1861 (that is, an order in writing under s. 145 of the present Code), shewing the grounds upon which he was satisfied that the dispute was one likely to lead to a breach of the peace; and that, if the parties consented to waive that point by consenting to go into the whole question, the Magistrate was wrong in taking the title of one person as *prima-facie* evidence of his possession, and throwing the *onus* on the other, and precluding that other from proving his title.—*Amrithnath Jha v. Ahmed Reza and Enayet Hossein*, 6 W. R. 61.

A MAGISTRATE has no authority to restore to possession a person who has been illegally dispossessed. He must declare the party in actual possession entitled to retain possession until ousted by due course of law, and forbid all disturbances of such possession in the meantime. If personal property of which a person has been unlawfully deprived come into the hands of a Magistrate, he may direct its restoration to its owner, otherwise the owner must sue for its value in the Civil Court.—*Ramjeebun Doobey v. Luchmonee Debea*, W. R. Sp. 5. But see s. 522 of this Code, which gives power to a Magistrate to restore to possession a person who has recently been wrongfully dispossessed of immoveable property.

WHERE a Magistrate found that an order of his predecessor, made two years previously, with regard to possession of certain land, had not been complied with, he enforced the order, and changed the possession in accordance with that order. *Held* that the Magistrate ought to have maintained the possession which he found, even if it was inconsistent with his predecessor's order, and that he ought not to have taken steps in the matter, unless some one actually in possession, and guaranteed possession by that order, came to complain to him that his possession was threatened, or that he had just been forcibly turned out, and asked in pursuance of that order to be maintained in possession.—*Queen v. Protap Chunder Barooah*, 21 W. R. 2.

THE possession in regard to which the Magistrate's jurisdiction under s. 145 should be exercised must be of a real and tangible character. When a party claims under a document or agreement the right of doing certain things over a large extent of territory, the performance of acts under such alleged right in one portion of the ground over which the right extends, although it may be good and sufficient for the purpose of keeping alive that right so as to be an answer to the plea of limitation raised in a civil suit, is not of itself a sufficient possession on which the Magistrate's order under s. 145 may be based for the purpose of forbidding in a distant locality acts not necessarily in conflict with such possession, though at variance with the right.—*Bejoy Nath Chatterjee v. The Bengal Coal Company Limited*, 23 W. R. 45.

A CERTAIN mauza having been sold in execution of a decree obtained upon a mortgage, the purchaser claimed a right under the sale to a *haut* appurtenant to the mauza, and was put by the nazir of the Civil Court into symbolical possession of the *haut* as well as of the mauza. The judgment-debtor refused to give up actual possession of the *haut*, maintaining that it was debuttur property of which he was the shebait. A breach of the peace being imminent in consequence of the rival claims, proceedings were taken under s. 145, and the Magistrate, finding that the judgment-debtor was in actual possession, ordered him to be retained in possession until ousted by a Civil Court. *Held* (setting aside that order) that the Magistrate had no power under s. 145 to direct the judgment-debtor to be retained in possession until ousted by a Civil Court, but was bound to see that the possession, as given by the nazir, was maintained, leaving it to the debtor to substantiate his claim as shebait in a Civil Court. The Court accordingly directed that the purchaser be restored to possession, and that the Magistrate do see that he is kept in possession until ousted by due course of law.—*In re Chutraput Singh*, 5 Cal. Law Rep. 200.

IN proceedings under s. 145 the Magistrate recorded the following words—“Whereas from the police-report a breach of the peace probable,”—and found that certain persons were in possession. *Held* that, although the record of the grounds was unsatisfactory, as the initial proceeding did not contain within itself all which the law requires to be recorded—*viz.*, in the first place, that the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists, and, in the second place, the ground upon which he is so satisfied,—yet that, as the police-report from which the grounds for apprehending a breach of the peace appeared was incorporated by reference, the final order was not defective. No sufficient evidence of possession was produced before the Magistrate, but evidence as to the title of the person in whose favour the Magistrate found was given, and the Magistrate based his decision upon the latter evidence, and determined the case with reference to the merits of the claims of the parties to the right of possession: *Held* that, although the Magistrate would have been justified in looking to the evidence of title in corroboration of the evidence of possession, he was wrong in basing his decision on the evidence of title, and his order was set aside.—*In the matter of the petition of Kali Kristo Thakur v. Golam Ali Chowdhry*, I. L. R., 7 Cal. 46.

WHERE a police-officer reported that there was a probability of a breach of the peace arising in consequence of a dispute about the possession of some land, and the Magistrate endorsed an order on the police-report, calling on the court-inspector to summon the parties, without having recorded a proceeding under s. 530 of the Code of 1872 (that is, an order under s. 145 of the present Code), expressing his satisfaction with the grounds on which a breach of the peace was apprehended, and it was contended by the party, in whose interests the order finally passed by the Magistrate was made, that the fact of the passing of the order embraced the necessary conviction: *Held* (following the current of decisions on the point) that, in order to justify a Magistrate in interfering with public rights under s. 145, it was necessary, not only that he should be satisfied upon sufficient grounds that a breach is likely to occur, but that he should acquire a jurisdiction to deal with it by first recording a proceeding (that is, an order in writing), expressing his opinion on the subject; and that the omission to record such a proceeding (or order in writing) is not a mere irregularity, but a substantial defect lying at the root of the Magistrate's jurisdiction. The section of the Criminal Procedure Code which gives the High Court power to correct any material error in any judicial proceeding of a subordinate Court refers to errors in law, and not to errors in finding of facts. *Held* also (Kemp, J., dissenting) that although symbolical possession is not entitled to weight as against a party

proved to be in possession, yet, in the absence of evidence, it is in itself deserving to be taken into consideration.—*Sheikh Munglo and Peer Khan v. Durga Narain Nag*, 25 W. R. 74.

ON THE 20th of March 1879, A applied to have certain lands, which he had lately purchased, registered in his name. The order of the Deputy Collector, declaring that A had proved possession, and was entitled to registration, was not passed until the 24th December 1879. Prior to A's purchase, B and C had, on the 6th March 1879, obtained registration of the same property. The proceedings were sent to the Commissioner, who, on the 29th September 1880, declared A to be entitled to the land; and in October the registration in the names of B and C was cancelled, and A's name was finally registered. In July 1880, proceedings under s. 145 were commenced upon the petition of certain raiyats, who alleged that other raiyats, at the instigation of A, were going to do acts which would lead to a breach of the peace. The Deputy Magistrate—the same person who, as Deputy Collector, had decided the land-registration case in favour of A—proceeded under s. 145 to consider the question as to who was in possession, and found that B and C were in possession.

Held that the Deputy Magistrate could not, in these proceedings, set aside the order which he had made in the registration-case, as that order could only be set aside in a regular suit.

The proceedings recorded by the Deputy Magistrate did not set forth in express language that he was satisfied that a dispute likely to create a breach of the peace existed in respect of the land in question, between A on the one side, and B and C on the other; nor did it set forth the grounds upon which he was so satisfied that such dispute existed.

Held that the proceeding was therefore defective.

In the proceedings the Magistrate referred to a police-report, which, however, did not show that a breach of the peace was imminent.

Held that although this report might be taken to be incorporated by reference, yet that it was not sufficient to justify the order.

Per Field, J.—Unless the parties are able to show that there is such a dispute as is likely to induce a breach of the peace, the Magistrate should hold his hand, and not proceed further. When the rights of the parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistrate to maintain the rights of the successful party, and the proper course for the Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under s. 107, and require from such person security to keep the peace.—*In re Gobind Chunder Moitra*, 1 L. R., 6 Cal. 835.

146. If the Magistrate decides that none of the parties is then in Act X., 1872,

Power to attach subject such possession, or is unable to satisfy himself s. 531.
of dispute, as to which of them is then in such possession, 1 O'Kin. 86.
of the subject of dispute, he may attach it until a competent Civil Court
has determined the rights of the parties thereto, or the person entitled
to possession thereof.

A MAGISTRATE may lease land attached under s. 146.—*Greesh Chunder Dass*, Applicant, 17 W. R. 38.

IF ANY Magistrate, not being empowered by law in this behalf, makes an order under this chapter, his proceedings are void.—S. 530 (j), *infra*.

A SESSIONS JUDGE has no power to interfere with an order of a Magistrate attaching disputed land under s. 146.—*Hurronath Chowdhry v. Rajendra Chunder Roy and others*, 15 W. R. 1.

BEFORE passing an order under s. 146, a full enquiry should be held, the prerequisite of the order being that the Magistrate is unable to ascertain the fact of possession.—*Mad. H. C. Pro.*, Nov. 28, 1870; *Weir*, p. 27.

THE power of attaching land regarding which there is a dispute conferred on a Magistrate by s. 146 extends to disputes as to possession of land of which rival zamindars are in possession by their raiyats.—*In re Maseyk*, Petitioner, 15 W. R. 1.

A MAGISTRATE is bound, before attaching the property in dispute, to take evidence for the purpose of ascertaining who was in actual possession of the subject of dispute, and to record his grounds for being satisfied that a breach of the peace was likely to occur.—*Mukhoda Dasse, Appellant*, 18 W. R. 4.

WHERE there was a dispute as to the actual possession of land, not between two co-proprietors, but between rival raiyats, it was held that, instead of attaching the whole estate under s. 146, the Magistrate ought to have settled the dispute as between the raiyats.—*Ramdyal and others v. Chinta Monee and others*, W. R. Sp. 28.

IT is only when, after recording a proceeding under s. 145, and taking evidence, a Magistrate decides that neither party is in possession, or is unable to satisfy himself as to which party is in possession, that he can, under s. 146, attach land in dispute. He is not competent summarily to order attachment without such preliminary proceedings.—*In re Ram Soondari Dabee*, 1 Cal. Law Rep. 86.

THE doubt upon which a Magistrate can act under s. 146 must arise from his inability to decide on evidence offered by the contending parties as to their possession, and not on doubt entertained without such enquiry. A Magistrate, acting under s. 145, cannot interpret the meaning of a decree of a Civil Court. He can determine only the fact of actual possession.—*In re Rajah Leelanund Singh Bahadur*, 1 Cal. Law Rep. 273.

A CERTIFICATE under Act XXVII. of 1860 is in no way a determination of a competent Civil Court of the right of the person to whom it is granted to possession of land under attachment under s. 146.—*In re Abilashery Debia*, 9 W. R. 18. Nor does such certificate give a right to possession if obtained after attachment, but the attachment remains in force until the right of possession has been definitely settled by a Civil Court.—*Kristo Chunder Mahata v. Mussamut Abinnessuree Debia*, 11 W. R. 532, Civ. Ruls.

A DEPUTY MAGISTRATE, after notice issued under s. 145 to two parties, finding himself unable to determine who was in possession, attached the property in dispute. Upon this, a third party represented that he, as landlord, had taken possession of the land on the death of the person to whom it had been leased. But the Deputy Magistrate refused to remove the attachment, holding that the landholder's possession was without colour of law. *Held* that the duty of the Deputy Magistrate, under the circumstances, was to withdraw his order.—*Joykissen Mookerjee and Peary Mohun Mookerjee*, Petitioners, 24 W. R. 40.

WHERE a Magistrate, being in doubt as to which of two persons was rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on their coming to an agreement, but subsequently re-attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended: *Held* that the Magistrate was only competent to order a fresh attachment after taking the preliminary steps under s. 145, if, on completion of enquiry, he found himself in the position described in s. 146; and that, if there was any new dispute, he ought to have proceeded *de novo*; but that the best course to pursue would be to exert his powers under ch. xxxvii.—*Queen v. Kali Kishore Roy*, 1st Party; *Kali Nath Roy*, 2nd Party; and *Gunga Chundee Roy*, 3rd Party, 25 W. R. 68.

Act X., 1872,
s. 532.
4 Cal. 324.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute concerning easements, &c., exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter, and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

THE obstruction of a drain into which the sewage of complainant's premises fell does not fall under s. 147, but is matter for a civil suit and an injunction.—*In re Troylukho Nath Bose*, 5 W. R. 58.

A RIGHT of way, or a right to the flow of water across the land of another, is a right of use of land within the meaning of s. 147.—*Mad. H. C. Pro.*, Feb. 18 and 21, 1867, and June 1, 1868; *Weir*, p. 27.

THE jurisdiction of a Magistrate to make an order under s. 147 does not arise unless it appears that the subject in dispute is open to the use of the public.—*Mad. H. C. Pro.*, Nov. 11, 1874; *Weir*, p. 27.

WHERE land is taken by Government under Act VI. of 1857, the land is absolutely vested in Government under s. 18, freed from any right of way previously enjoyed by the public over such land.—*In re H. B. Fenwick*, 6 B. L. R., App., 47; and 14 W. R. 72.

BEFORE a Magistrate can make an order under s. 133 to remove an obstruction from a path alleged to be a public thoroughfare, he must first, in a proceeding held under s. 147, have come to the conclusion that the path is open to the use of the public.—*In the matter of the petition of Chandra Nath Sen*, 1 L. R., 5 Cal. 875.

S. 147 is not intended to provide a substitute for a civil suit to declare the rights of the parties, but only empowers the Magistrate to order that possession shall not be taken by any party to the exclusion of the public, until the party claiming possession obtain a decree for exclusive possession.—*Moonshee Hurukh Lall*, 6 W. R. 74.

IN order to found the jurisdiction of a Magistrate to take action under s. 147, it is necessary that a dispute exists between two persons concerning the right to the use of any land or water, or any right of way. The jurisdiction is intended for the purpose of preserving the public peace.—*Rosik Lall Nundi v. Kartik Shaut*, 22 W. R. 48.

S. 147 does not enable a Magistrate to make a purely declaratory order. It only enables him to prevent arbitrary interruptions by any person of rights actually enjoyed, which have been exercised by the public or a person or class of persons.—*In the matter of the Maharaja of Burdwan v. The Chairman of the Darjeeling Municipality*, 1 L. R., 5 Cal. 194.

THE jurisdiction given by s. 147 to decide for a time the right to enjoyment of property should not be exercised except on clear and satisfactory proof. Where the only evidence is user, it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right, and permitted uninterrupted for some considerable length of time.—*Mad. H. C. Pro.*, Jan. 4, 1869; *Weir*, p. 27.

IN a case of dispute under s. 147, it is discretionary with the Magistrate to interfere. The complainant must, however, make out a sufficient case for the Magistrate's interference.—*In re Russool Nushyo*, 11 W. R. 3. But see, *contra*, *Bhoiro Mundul*, 14 W. R. 28, in which it was held that a Magistrate was bound to investigate a case in which the complainant alleged that his right of way had been interfered with, and ought not to refer the complainant to the Civil Court.

A DEPUTY Magistrate has no jurisdiction, under s. 147, to order a ditch which was once a pathway, but afterwards filled up, to be opened out, and a wall built upon it, before any complaint was made regarding the filling up of the ditch, to be pulled down. Even if he had such jurisdiction, he should not pass such an order without legal proof that the use of the ditch and pathway was open to the public and to the prosecutor.—*Sreemunto Duloui v. Ram Chand Aduck*, 5 W. R. 57.

WHERE a complaint was made to a Magistrate that an obstruction had been raised, and existed on land reserved by Government and dedicated as a public road, it was held that an *ex parte* order, purporting to be made under s. 147, directing the party in possession not to retain possession of the land until he should obtain the decision of a competent Civil Court adjudging him to be entitled to exclusive possession, with a further direction to remove the obstruction, was bad in law.—In the matter of Alfred Lindsay, Petitioner, I. L. R., 4 Mad. 121.

So long as the bed of a navigable river is washed by the ordinary flow of the tide at a season when the river is not flooded, it remains *publici juris*: or, if it is vested in any one, it is vested in the Crown, not under Regulation XI. of 1825, or for mere fiscal purposes, but as representing, and as it were, a trustee for the public. A channel which can be crossed on foot only at the extreme ebb of the tide, and probably for some short time before and after, is not "fordable" within the meaning of cl. 3, s. 4, Reg. XI., 1825.—Nobin Kishore Roy v. Jogesh Pershad Gangooly, 14 W. R. 352.

In a case of dispute concerning a right of way, the Magistrate, instead of deciding against the complainant on the ground that he already has another way of approach to his own house, ought to enquire whether or not the new road has been in the use and occupation of the complainant, and, if so, to retain him in it, leaving the owner of the land to determine the question of right to the easement in the Civil Court. There is nothing in s. 147 which makes it imperative that there should be an impending breach of the peace before a Magistrate can interfere to decide a right of way.—Reg. v. Troyluckho Nath Sircar, 2 W. R. 64.

THE only functions which a jury appointed under s. 133, can exercise, are to consider whether the order made by the Magistrate under s. 133 is reasonable and proper, it being no part of their duty to determine the rights of parties in property. *Held*, therefore, that where a Magistrate, through a mistaken view of the law, ordered the removal of an obstruction on a pathway under s. 133, and had further submitted this order to the consideration of a jury appointed under s. 133, before he had himself come to a conclusion whether such pathway was a public thoroughfare, the only course left open to him under such circumstances was to stay all proceedings initiated under s. 133, and take action under s. 147.—In the matter of the petition of Chandra Nath Sen, I. L. R., 5 Cal. 875.

GATES having been placed at one end of a private road by a person claiming to be its sole proprietor, with the intention of preventing the use of such private road by the public between the hours of sunset and sunrise, and the Deputy Commissioner of Darjeeling, acting for the public, having obtained from the Magistrate an order under s. 147, "that possession of the private road be not taken by the person claiming to be proprietor to the exclusion of the public right of way until he shall have obtained the decision of a competent Civil Court adjudging him to be entitled to exclusive possession:" *Held* that there being no evidence of any one having exercised or claimed to exercise the right of passing over the road between sunset and sunrise, there was no dispute under this section; and that the order of the Magistrate was made without authority, and must be set aside.—In the matter of the Maharaja of Burdwan v. The Chairman of the Darjeeling Municipality, I. L. R., 5 Cal. 194.

BEFORE a Magistrate can make an order under s. 133 to remove an obstruction from a path alleged to be a public thoroughfare, he must first, in a proceeding held under s. 147, have come to the conclusion that the path is open to the use of the public. The only functions which a jury appointed under s. 133 can exercise are to consider whether the order made by the Magistrate under s. 133 is reasonable and proper, it being no part of their duty to determine the rights of parties in property. *Held*, therefore, that where a Magistrate, through a mistaken view of the law, ordered the removal of an obstruction on a pathway under s. 133, and had further submitted this order to the consideration of a jury appointed under s. 133 before he had himself come to the conclusion whether such pathway was a public thoroughfare, the only course left open to him under such circumstances was to stay all proceedings initiated under s. 133, and take action under s. 147.—In re Chunder Nath Sen, I. L. R., 5 Cal. 875.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid. Act X., 1872, s. 533.

Local inquiry.

The report of the person so deputed may be read as evidence in the case.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147, may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

Order as to costs.

THE duty of making an enquiry under s. 148 should be deputed to a Magistrate, not a Kanungo.—*Umachurn Santra v. Benimadhab Roy*, 7 Cal. Law Rep. 352.

IN a dispute for possession of land under s. 145 the written report of an amin who was deputed to hold a local enquiry is not sufficient by itself to justify an order retaining a party in possession until ousted by due course of law.—*Reg. v. Soumber Ahir*, 20 W. R. 57.

WHEN local inquiry under s. 148 is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with its results, and to have an opportunity of rebutting the deputed Magistrate's report, if he thinks necessary so to do.—*Mir Dhinoo v. Thomas Brown*, 21 W. R. 25.

IN a proceeding under s. 145, the Magistrate must decide the fact of possession on evidence taken by himself, and not according to the result of a local inquiry made under s. 148, unless the parties have consented to be bound thereby. *Per* Prinsep, J.—The local inquiry referred to in s. 148 should be restricted solely to some question relating to the features of the property about which the dispute has arisen, and should not be directed to any matter which can be proved before the Magistrate by oral evidence.—*In re Boikant Kumar and others*, 3 Cal. Law Rep. 134

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

149. Every police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence. Act X., 1872, s. 95.

Police to prevent cognizable offences.

150. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence. Act X., 1872, s. 96.

Information of design to commit such offences.

151. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate, and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented. Act X., 1872, s. 97.

Arrest to prevent such offences.

Act X., 1872, **152.** A police-officer may of his own authority interpose to prevent
 s. 98, para.
 1. Prevention of injury to any injury attempted to be committed in his
 public property. view to any public property, moveable or im-
 moveable, or the removal or injury of any public land-mark, or buoy, or
 other mark used for navigation.

Act X., 1872, **153.** Any officer in charge of a police-station may, without a war-
 s. 381. Inspection of weights and rant, enter any place within the limits of such
 measures. station for the purpose of inspecting or search-
 ing for any weights or measures, or instruments for weighing, used or
 kept therein, whenever he has reason to believe that there are in such
 place any weights, measures, or instruments for weighing which are
 false.

 If he finds in such place any weights, measures, or instruments for
 weighing which are false, he may seize the same, and shall forthwith
 give information of such seizure to a Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Act X., 1872, **154.** Every information relating to the commission of a cognizable
 s. 112. Information in cogni- offence, if given orally to an officer in charge of
 Cf. P. Code, s. zable cases. a police-station, shall be reduced to writing by
 180. him or under his direction, and be read over to the informant; and
 every such information, whether given in writing or reduced to writing
 as aforesaid, shall be signed by the person giving it, and the substance
 thereof shall be entered in a book to be kept by such officer in such
 form as the Local Government may prescribe in this behalf.

A PERSON who wilfully gives false information with intent to cause a public
 servant to use his lawful power to the injury of another person is punishable under
 s. 182, Penal Code.

THE mere fact of a complaint having been preferred to an inspector of police
 is sufficient, if it be proved that it has been falsely and deliberately made, to sup-
 port a conviction under s. 211, Penal Code, even though he has not acted upon the
 complaint.—Surbunna Guandan and others, 1 Mad. 30; Bonomalee Sahai, 5 W. R. 32.

Act X., 1872, **155.** When information is given to an officer in charge of a police-
 s. 113. Information in non-cogni- station of the commission within the limits of
 zable cases. such station of a non-cognizable offence, he shall
 enter, in a book to be kept as aforesaid, the substance of such inform-
 ation, and refer the informant to the Magistrate.

Act X., 1872, No police-officer shall investigate a non-cognizable case without
 s. 110. Investigation into non- the order of a Magistrate of the first or second
 cognizable cases. class having power to try such case or commit
 the same for trial, or of a Presidency Magistrate.

Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV., relating to the place of inquiry or trial. *Act X., 1872, ss. 109, 114, para. 2; v. infra, s. 183.*

No proceeding of a police-officer in any such case shall, at any stage, be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. *Act X., 1872, s. 114, last para.*

157. If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender: *Act X., 1872, s. 114, para. 1.*

Provided as follows:—

(a) when any information as to the commission of any such offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot: *Act X., 1872, s. 116.*

(b) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. *Act X., 1872, s. 117, para. 1.*

In each of the cases mentioned in clauses (a) and (b), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf. *Act X., 1872, s. 117, para. 2.*

Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording, such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code. *Act X., 1872, s. 115.*

IN a case in which a Deputy Magistrate took an active part in the capture of parties charged with having been members of an unlawful assembly—parties whom he himself tried on that charge—it was held that he was bound to state to the accused, so far as he could, what were the facts he himself observed, and to which he himself could bear testimony : and the prisoner in such situation had a right, if he thought it desirable, to cross examine the Judge, whose evidence should be recorded and form part of the record in the case. The proper course, however, for the Deputy Magistrate to have taken in this case would have been to decline to try the case, and to ask that it should be undertaken by some other Judge.—*Hurro Chunder Paul and others, Petitioners*, 20 W. R. 76.

Act X., 1872,
s. 118.

160. Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

REFUSAL to attend is punishable under s. 174, Penal Code.

A POLICE-OFFICER has no power to compel a witness by force to attend before him.—*Reg. v. Behary Singh and others*, 7 W. R. 3.

Act X., 1872,
ss. 118, 119,
paras. 1 and
2, 121.

161. Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

THE second clause of s. 161 supersedes several rulings which were to the effect that a person is not bound to speak the truth.

A PRISONER on his trial is not entitled to insist that a memorandum made by a police-officer under the provisions of s. 161 shall, in the course of the examination of such officer, be referred to by the latter for the purpose of refreshing his memory.—*Empress v. Kali Churn Chunari and others*, I. L. R., 8 Cal. 154.

S. 161 not making it obligatory upon a police-officer to reduce to writing any statements made to him during an investigation, neither that section, nor s. 91 of the Indian Evidence Act, renders oral evidence of such statements inadmissible. If the statements be actually reduced to writing, the writing itself cannot be treated as part of the record or used as evidence, but may be used for the purpose of refreshing memory under s. 159 of the Evidence Act. Consequently, the person making the statements may properly be questioned about them; and, with a view to impeach his credit, the police-officer himself, or any other person in whose hearing the statements were made, can be examined on the point under s. 155 of the Evidence Act.—*Reg. v. Uttamchand Kapurehand and others*, 11 Bom. H. C. Rep. 120.

Act X., 1872,
ss. 119, para.
3, 121.
11 Bom. H. C.
Rep., 120.

162. No statement, other than a dying declaration, made by any person to a police-officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

AN admission made by an accused person to a police-officer before arrest is admissible in evidence.—*Empress v. Dabee Pershad*, I. L. R., 6 Cal. 530.

A PRISONER was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered the loss of the property, and reported his loss to a railway police-inspector at the first station at which the train stopped after he became aware of the theft, prisoner not then being present. This statement was tendered in evidence, and admitted under s. 8, illustration k of the Evidence Act. Evidence was also tendered of a statement made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him by his sister, and that he had bought the rest, and this was admitted; the Court remarking then that there was a distinction in the Evidence Act between "admission" and "confession."—*Queen v. Macdonald*, 10 B. L. R., App., 2.

WHERE statements made to a police-officer are reduced by him to writing, they cannot be treated at the trial as part of the record, or used as evidence by the prosecution to establish the guilt of the accused, but may be used for the purpose of refreshing memory, under s. 159 of the Evidence Act (I. of 1872). Witnesses may therefore be cross-examined as to former statements made by them to a police-officer during an investigation by him, although such police-officer may have reduced such statements to writing; and, with a view to impeach the credit of such witnesses, the police-officer himself, or any other person in whose hearing the statements were made, can be examined on the point, under s. 155 of the Evidence Act (I. of 1872). Where a Magistrate declined to allow witnesses for the prosecution to be cross-examined as to previous statements made by them to a police-officer, and by him reduced to writing, it was held that this was a material error within the meaning of the Code, and the conviction was reversed, and the case sent back to allow the accused to show, if they could, that the witnesses for the prosecution had made previous inconsistent statements.—*Reg. v. Uttamchand Kapurchand*, 11 Bom. II. C. Rep. 120.

THE prisoner, on his arrest, made a statement in the nature of a confession, which was reduced into writing by one of the inspectors in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the Police-office, the Deputy Commissioner receiving and attesting the statement in his capacity of Magistrate and Justice of the Peace. At the trial of the prisoner at the Criminal Sessions of the High Court, this statement was tendered in evidence against him, and admitted by the Judge, who overruled an objection on behalf of the prisoner that, under s. 25 of the Evidence Act, it was inadmissible. On a case certified by the Advocate-General under cl. 26 of the Letters Patent, it was held that the confession was, under s. 25 of the Evidence Act, not admissible in evidence. *Per* Garth, C.J.—S. 26 of the Evidence Act is not to be read as qualifying the plain meaning of s. 25. In construing s. 25, the term "police-officer" is not to be read in a technical sense, but in its more comprehensive and popular meaning. *Per curiam*.—S. 167 of the Evidence Act applies as well as to criminal as to civil cases. *Per* Garth, C.J. (Pontifex, J., doubting).—The Court which, under that section, is to decide upon the sufficiency of the evidence to support the conviction is, in a case coming before the Court, and under s. 26 of the Letters Patent, the Court of review, and not the Court below. Such decision is to be come to on being informed by the Judge's notes, and if necessary by the Judge himself, of the evidence adduced at the trial. *Per curiam*.—Apart from s. 167, the Court has power, in a case under cl. 26 of the Letters Patent, to review the whole case on the merits, and affirm or quash the conviction.—*Queen v. Haribole Chunder Ghose* I. L. R., 1 Cal. 207.

Act X., 1872,
ss. 120, 184.
Cf. Act I.,
1872, s. 21.
See 6 Cal.
293-297.
Nelson, 113.

163. No police-officer or person in authority shall offer or make, or

No inducement to be cause to be offered or made, any such inducement, threat, or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

But no police-officer or other person shall prevent, by any caution or otherwise, any person from making, in the course of any investigation under this chapter, any statement which he may be disposed to make of his own free will.

AN admission of crime, when fairly made after due warning, is not inadmissible, simply because, at the time it was made, no formal accusation had been made against the party making it.—*Reg. v. Ram Churn Chamar*, 4 W. R. 10.

A HEAD of a Village is a Magistrate within the meaning of the Criminal Procedure Code, and the confession of an accused person in the custody of the police, if made in his presence, is admissible in evidence.—*Mad. H. C. Pro.*, Feb. 14, 1868.

THE mere standing by of a Magistrate when a confession is being made to the police will not make such confession evidence. But where the Magistrate is himself conducting the investigation, the confession of a prisoner, though he may then be in the custody of the police, can, under s. 26 of the Evidence Act, be used against him.—*Reg. v. Domun Kahar and others*, 12 W. R. 82.

THE prisoner, on being arrested, made a statement to the arresting officer, which was sought to be put in evidence. Peacock, C.J., made the following remarks: "The answer did not amount to a confession of guilt, but was a statement of facts, which, if true, showed that the prisoner was innocent. It is not a confession obtained under an inducement of hope or fear. The only objection to the statement being admissible as evidence is, that it was made in answer to a question put by the police-officer.—*Reg. v. Nabadwip Goswami*, 1 B. L. R. 15.

WHERE a police-officer told the prisoners that he would get them released if they told the truth, and the prisoners, in consequence of this inducement, made a confession, it was held that the police-officer acted improperly and illegally in offering any inducement to the prisoners to make any disclosure or confession. It was also held that no part of the police officer's evidence as to the discovery of facts in consequence of such confession was legally admissible.—*Reg. v. Dhurum Dutt Ojha and two others*, 8 W. R. 13; *Bishoo Manjee*, Appellant, 9 W. R. 16.

W, A TRAVELLING auditor in the service of the G. I. P. Railway Company, having discovered defalcations in the accounts of the prisoner, who was a booking-clerk of the Company, went to him and told him that "he had better pay the money than go to jail," and added that "it would be better for him to tell the truth;" after which, on the same day, the prisoner was brought before the Traffic Manager, in whose presence he signed a receipt for, and admitted having received, a sum of Rs. 826-8. The prisoner was subsequently tried for criminal breach of trust as a servant in respect of this and of other sums. Held that the words used by W, the travelling auditor, constituted an inducement to the prisoner to confess, and that W was a person in authority within the meaning of s. 24 of the Evidence Act, and that the receipt signed by the prisoner was therefore not admissible in evidence on his trial.—*Reg. v. Navroji Dadabhai*, 9 Bom. H. C. Rep. 358.

Act X., 1872, s. 122. 164. Any Magistrate, not being a police-officer, may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Act IV., 1877, s. 16. See 6 Cal. 293-297. I. L. R., 1 Bom. 219. Such statements shall be recorded in such of the manners herein-after prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

“I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him. Act X., 1872,
s. 379.

“(Signed) A. B.,
“Magistrate.”

It is not necessary for a Magistrate to caution a prisoner before receiving his or her statement.—*Mad. H. C. Pro.*, Dec. 9, 1869; *Weir*, p. 8.

A CONVICTION based solely on the evidence (confession) of a co-prisoner is bad in law.—*Reg. v. Ambigora Haulagu and others*, 1 L. R., 1 *Mad.* 163. See also 1 L. R., 1 *All.* 664, 675.

A MAGISTRATE, when recording a confession, should not allow the police officer who brought the prisoner to suggest questions or even to be present.—*Cal. H. C. Cir.* 7, July 30, 1873.

THIS section authorizes a Magistrate to record the statement of a person who appears before him as a witness, as well as the confession of a person accused of an offence.—*Empress v. Malika*, 1 L. R., 2 *Bom.* 613.

THE Magistrate, when questioning an accused person making a confession, is only to put questions to him as to whether or not the confession was made voluntarily.—*Reg. v. Bai Ratan*, 10 *Bom. H. C. Rep.* 166.

A CONFESSION does not become irrelevant merely because the memorandum required by law to be attached thereto by the Magistrate taking it has not been written in the exact form prescribed.—*Empress v. Bhairon Singh and others*, 1 L. R., 3 *All.* 338.

THE practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such confession is legally admissible in evidence when duly proved.—*Reg. v. Vahala Jetha*, 7 *Bom. H. C. Rep.*, *Cr. Ca.*, 56.

WHEN the confession of a prisoner under s. 164 was not taken in the manner provided by s. 364, and was, therefore, defective: *Held* that the evidence of the recording officer, that such confession was actually made, was inadmissible to remedy the defect.—*In re Empress v. Mannoo Tamoollee*, 1 L. R., 4 *Cal.* 696.

WHENEVER a police-officer is about to depose to a confessional statement made by the prisoner to him while in custody, he should be asked whether a Magistrate was present. If not, the confessional statement is inadmissible, except so far as it relates to a fact discovered thereby.—*Mad. H. C. Pro.*, Sep. 13, 1864; *Weir*, p. 8.

THE terms, ‘any Magistrate,’ must be restricted to mean any person exercising any of the powers of a Magistrate within the particular place where the statement or confession is recorded. Thus, a Magistrate having jurisdiction in the Suburbs of Calcutta was held to have no jurisdiction to act under s. 164 in Calcutta.—*Haribole Chunder Ghose*, 1 L. R., 1 *Cal.* 207.

A CONFESSORIAL statement made at the close of a trial is not a plea of guilty upon which the Judge can record a finding without taking the verdict of the jury or the opinion of the assessors. After a prisoner has once claimed to be tried, all the evidence, including the prisoner’s admission, must be laid before them.—*Mad. H. C. Pro.*, Nov. 12, 1866; *Weir*, p. 8.

A CONFESSION made by the accused person before a Magistrate who has jurisdiction to deal with the matter to which it relates may be made at the commencement of a trial or inquiry under ch. xviii. of this Code, and be treated as a confession under s. 364, whether or not the case be still under the investigation of the police.—*Krishna Monce v. Empress*, 6 *Cal. Law Rep.* 289.

ONE prisoner cannot be convicted on the confession of another prisoner without further evidence. S. 30 of Act I. of 1872 is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence and bad in law.—*Mad. H. C. Pro.*, Jan. 24, 1873; *Weir*, p. 9.

A CONFESSION recorded under this section, to be admissible in evidence, must not only bear a memorandum that the Magistrate believed it to have been voluntarily made, but also a certificate, under s. 364, that it was taken in the Magistrate's presence and hearing, and contains accurately the whole of the statement made by the accused person.—*Reg. v. Shiva, son of Bhagowa*, and three others, *I. L. R.*, 1 Bom. 219.

A CONFESSION recorded by a Magistrate, who afterwards conducts the enquiry preliminary to committal, and has no jurisdiction to do so, is to be treated as an examination under s. 342, and not as a confession recorded under s. 164, notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police-investigation.—*Empress v. Anantaram Singh and others*, *I. L. R.*, 5 Cal. 954 (F. B.).

S. 164, which requires a Magistrate to certify on a confession his belief that it was voluntarily made, does not apply to the case of a confession taken by a Magistrate who is actually investigating the case and examining the witnesses preparatory to commitment; but to a case where some other Magistrate takes a confession and forwards it to the Magistrate by whom the case is inquired into or tried.—*Queen v. Jetoo and others*, 23 W. R. 16.

WHERE a person has, on his own plea, been convicted on a trial held by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal, and therefore also the sentence, does not lie according to the provisions of s. 167 of the Presidency Magistrates' Act No. IV. of 1877 (ss. 411, 412, of this Code), albeit that the Magistrate has sentenced the person to imprisonment for a term exceeding six months, or to a fine exceeding two hundred rupees.—*Empress v. Jāfar M. Talab*, *I. L. R.*, 5 Bom. 85.

WHEN arraigning an accused, and before receiving his plea, the Court should be careful to ensure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly the nature of the charge to which he is called upon to plead. It is not necessary that a statement made to a Court by an accused in a foreign language should be taken down in the words of that language. The language in which the statement is conveyed to the Court by the interpreter is the language in which it should be recorded.—*Empress v. Vaimbilee*; *Vaimbilee v. Empress*, *I. L. R.*, 5 Cal. 826.

If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.—S. 533, *infra*. This section supersedes the full-bench ruling of the Bombay High Court in the case of *Reg. v. Bai Ratan* (10 Bom. H. C. Rep. 166), in which it was held that a confession was inadmissible unless signed or attested by the mark of the accused.

WHEN a confession is made to a Magistrate by an accused person during an enquiry held previously to the case being taken up by the committing officer and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of ss. 164 and 364. If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session may take evidence that the accused person duly made the statement recorded; but a Court of Session is not at liberty to treat a deposition sent up with the record and made by the recording officer before the committing officer to the effect that the accused person did in fact duly make before him the statement recorded as evidence of that fact. In such a case the recording officer must himself be called and examined by the Court of Session, except in cases in which the presence of the

recording officer cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court of Session considers unreasonable.—*Noshai Mistri and Ranchandra Haldar v. The Empress*, 1 L. R., 5 Cal. 958.

165. Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place. Act X., 1872, s. 380.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

166. An officer in charge of a police-station may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found (if any) to the officer at whose request the search was made. Act X., 1872, s. 124, paras. 2, 3, and 4.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

At the expiration of the 24 hours, unless the special order of the Magistrate has been obtained, the prisoner must either be discharged or sent to the Magistrate, and any longer detention is absolutely unlawful.—*Per Markby, J., Reg. v. Behary Singh*, 7 W. R. 3.

A MAGISTRATE only, and not a Sessions Judge, has power to try cases under s. 29, Act V. of 1861. S. 167 of the Criminal Procedure Code does not apply to cases in which there has not been a continuous detention of 24 hours.—*Indrobee Thaba, Appellant*, 1 W. R. 5.

THE time during which a party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment. In no case is a police-officer justified in detaining a person for a single hour except upon some reasonable ground justified by all the circumstances of the case.—*Queen v. Suprosunno Ghosaul*, 6 W. R. 88.

THE order of a Magistrate sanctioning the detention of an accused person by the police for an indefinite period is illegal. At the expiration of 24 hours from the time of arrest, the accused must be brought before a Magistrate, who can then remand for a period not exceeding 15 days. No remand for a longer period can be made without a hearing.—*Reg. v. Surkya Dhaiku*, 5 Bom. II. C. Rep. 31, Cr. Ca.

Act X., 1872, s. 123, para. 2. **168.** When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Act X., 1872, s. 125. **169.** If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report, and to try the accused or commit him for trial.

Act X., 1872, ss. 123, para. 1, 127, para. 1, 130, paras. 1 to 4. **170.** If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report, and to try the accused or commit him for trial; or, if the offence is bailable, and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a police-station forwards an accused person to a Magistrate, or takes security for his appearance before such

Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate, and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

In a preliminary enquiry before a Magistrate, the evidence should be sent in as found, and not kept by the police till they have made it all complete.—Reg. v. Kodai Kahar and others, 5 W. R. 6.

The police are not at liberty to bind witnesses over to appear a month after date, but should require them to attend on an early date. The practice of requiring the complainant and his witnesses to attend after such a length of time was condemned by the High Court in strong terms.—Reg. v. Bheem Manjee and another, 6 W. R. 52.

The escheating of recognizances is a proceeding resorted to where persons who have undertaken to give evidence in a criminal enquiry have failed without just excuse to attend, and have thus created an obstruction of public justice; but where a Magistrate thinks it proper to escheat their recognizances, he ought to allow them an opportunity of justifying their default.—Queen v. Dassoo Manjee, 11 W. R. 39.

Complainants and witnesses not to be required to accompany police-officer.

Complainants and witnesses not to be subjected to restraint.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer, Act X., 1872, s. 130, last para.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond: Act X., 1872, s. 131, para. 1.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed. Act X., 1872, s. 131, para. 2.

Recausant complainant or witness may be forwarded in custody.

172. Every police-officer making an investigation under this chapter shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. Act X., 1872, s. 126.

Diary of proceedings in investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

A POLICE-DIARY, though it may be used by a Criminal Court to aid it in an inquiry or trial, cannot be legally used as substantive evidence, or read to the jury.—*Reg. v. Hurdut Surma*, 8 W. R. 68.

No prisoner is entitled to insist that a police-diary, if not in Court, shall be sent for, or, if it be in Court, that it be referred to for the purpose of refreshing the memory of a police-officer under examination.—*In re Kali Churn Chunari*, 10 Cal. Law Rep. 51.

Act X., 1872, **173.** Every investigation under this chapter shall be completed
ss. 125, 127, Report of police-officer. without unnecessary delay, and, as soon as it is
paras. 1 & 2. completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of police has been appointed under section 158, the report shall be submitted through him, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

In his charge to the jury in the Eltham murder case, C. J. Bovill, referring to the police-inquiry, said: "It did unfortunately happen that men constantly engaged in the detection of crime, when they found they had got a clue, followed it only in one direction. For that reason Judges and juries should be always on their guard with respect to that part of a case which depended on the testimony of the police. If the minds of the police had arrived at one conclusion, everything of importance tending in that direction was remembered, and circumstances that pointed in a different direction were too often but lightly regarded." It is the duty of the police to put every fact before the Magistrate, those which bear for the prisoner as well as those that tell against him; if they do not do this, they fail in their duty; otherwise the Magistrate is sure to be misled, and the risk of forming an incorrect decision is apparent.—*Reg. v. Pook*.

Act X., 1872, Police to inquire and re- **174.** Every officer in charge of a police-
s. 133. port on suicide, &c. station, on receiving information that a person—
 (a) has committed suicide, or
 (b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

This power may be exercised so as to save Military Courts of Inquest.

The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when, for any other reason, the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

175. An officer in charge of a police-station may, by order in writing, summon two or more persons as aforesaid Act X., 1872, s. 134.

Power to summon persons.

for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Penal Code, ss. 174, 179.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests Act X., 1872, s. 135.

Inquiry by Magistrate into cause of death.

shall, and, in any other case mentioned in section 174, clauses (a), (b), and (c), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an

inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

New. Cf. Act
IV., 1871, s.
11.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

WHERE the Magistrate of a Division held an enquiry, under s. 176, into the cause of the death of a person found dead under suspicious circumstances, and, without making a specific charge against any person, drew up a report embodying the result of his enquiry, and sent the report to the Magistrate of the District, and subsequently proceedings were taken against one of the witnesses, which ultimately resulted in an acquittal, it was held by the High Court that, there being nothing in the language of s. 176 requiring the Magistrate holding such an enquiry either to make a report or to come to a finding, the report actually sent could not be considered as part of a judicial proceeding, and that therefore the High Court had no power to send for it under the Criminal Procedure Code. No analogy exists between a Coroner's inquest and an enquiry into the cause of death under s. 176.—*In re Trailukho Nath Biswas and Ramcharan Biswas*, 1. L. R., 3 Cal. 742.

PART VI. PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Act X., 1872,
s. 63, para.
1.
Act IV., 1877,
s. 18.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

S. 101 of the Mutiny Act does not deprive the Civil as opposed to Military Courts jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The section is merely permissive of a military trial being held.—*Empress v. Maguire*, 1. L. R., 5 Cal. 124.

S. 532 contemplates the contingency of a case which has been inquired into at the proper place, as indicated by s. 177, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment; and not of a case which has been inquired into in a district in which it was not committed, being committed to the proper Court of Session, as indicated by that section, by a particular Magistrate duly empowered by law to make such a commitment. Consequently, where a Magistrate inquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such commitment because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings in such case are illegal *ab initio*.—*Empress v. Jagan Nath*, 1. L. R., 3 All. 258.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division : Act X., 1872, s. 63, para. 2.

Power to order cases to be tried in different Sessions Divisions. Act XI., 1874, s. 9.

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued. Act X., 1872, s. 65. Act IV., 1877, s. 19.

Accused triable in district where act is done, or where consequence ensues.

Illustrations.

(a.) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(b.) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days, within the local limits of the jurisdiction of Court Y, and during ten days, more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y, or Z.

(c.) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

THE Sessions Judge of Benares tried and sentenced a prostitute, who had purchased a girl at Mirzapur and brought her to Benares, under s. 373, Penal Code, for buying a minor for the purposes of prostitution. The Judge held that he had jurisdiction, as the possession of the girl was a consequence by reason of which the prostitute was accused of an offence. On appeal, however, the Agra Sadr Court ruled that the lower Court had no jurisdiction, as the purchase with intent, &c., which took place at Mirzapur, was the offence, and therefore no "consequence," such as is contemplated by s. 179, ensued. The Court also ruled that the terms, "anything which has been done," mean some act constituting the offence, or part of it; and that the terms, "any consequence which has ensued," mean some consequence modifying or completing that act.—Musst. Jowahir, 6 Agra. H. C. Rep. 46.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done. Act X., 1872, s. 66, omitting Illustration (d). Act IV., 1877, s. 20.

Place of trial where act is offence by reason of relation to other offence.

Illustrations.

(a.) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b.) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

A CONVICTION of mischief (slaughtering) committed in British territory in respect of an animal stolen from a foreign territory is not bad in law.—*Mad. H. C. Pro.*, Feb. 22, 1879; *Weir*, p. 21.

THE accused stole property in foreign territory, and was apprehended with it in his possession in a district in British territory. *Held* that s. 181 did not give the Courts of such district jurisdiction to try him for the theft.—*Reg. v. Advigadu*, I. L. R., 1 *Mad.* 171.

A PERSON who cannot be charged with the offence of theft on account of his offence having been committed in foreign territory may be tried and convicted of retaining the stolen property, if he continues to be in possession of such property within the British territories.—*Mad. H. C. Pro.*, March 4, 1875; *Weir*, p. 21.

A NEPALESE subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested, and sentenced to one year's rigorous imprisonment. *Held* that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property.—*Empress v. Sunker Gope*, I. L. R., 6 *Cal.* 307.

THE Criminal Procedure Code being in force in British Burmah, a complaint of criminal misappropriation or breach of trust of property entrusted at Rangoon may, when the accused resides in the Madras Presidency, be inquired into or tried by any competent Magistrate or Court in the Madras Presidency.—*Mad. H. C. Pro.*, Aug. 29, 1879; *Weir*, p. 21.

WHERE a foreign subject, resident in foreign territory, instigated the commission of an offence which, in consequence, was committed in British territory, it was held that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code.—*Reg. v. Pirtai*, 10 *Bom. H. C. Rep.* 356.

WHERE the act by which the accused became possessed of property was committed in Ceylon, no Court in British India had jurisdiction in respect of such act or of his subsequent acts in remaining in possession of the said property. In the absence of compliance with the provisions of the Extradition Act, no Court in British India can recognize, as offences, acts over which they have not, by virtue of s. 2 of the Penal Code, territorial jurisdiction.—*Mad. H. C. Pro.*, Oct 2, 1877; *Weir*, p. 21.

WHERE dacoity was committed at Velanpur, a village in the territory of His Highness the Gaekwar, and a part of the stolen property found where it had been concealed by the accused in British territory, it was held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpur, although, had Velanpur been in British territory, the subsequent acts in the process of taking away the property might in the legal sense have coalesced with the first and principal one, so as to give jurisdiction in each district into which the property was conveyed. But on a conviction of retaining stolen property the sentence awarded could, it was held, be sustained, the retaining having taken place in British territory.—*Reg. v. Lakhya Govind and another*, I. L. R., 1 *Bom.* 50.

Act X., 1872,
s. 67, Illustration (c),
s. 68.
Act IV., 1877,
s. 22.

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief, or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

THE accused stole property in foreign territory, and was apprehended with it in his possession in a district in British territory : *Held* that this section did not give the Courts of such district jurisdiction to try him for the theft.—*Reg. v. Adivigadu*, I. L. R., 1 Mad. 171.

WHERE dacoity was committed at Velanpur, a village in the Gaekwar's territory, and a part of the stolen property found where it had been concealed by the accused in British territory, it was held that the conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpur, although, had Velanpur been in British territory, the subsequent acts in the process of taking away the property might in the legal sense have coalesced with the first and principal one, so as to give jurisdiction under this section in each district into which the property was conveyed. But, on the conviction of retaining stolen property, the sentences awarded could, it was held, be sustained, the retaining having taken place in British territory.—*Reg. v. Lakhya Govind and another*, I. L. R., 1 Bom. 50.

Place of inquiry or trial where scene of offence is uncertain, or not in one district only; or where offence is continuing, or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

WHERE the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was held that the Court of Sessions at Patna had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the district of Patna, in pursuance of the original concerted plan, and with reference to the common object. The Court of Patna had jurisdiction also, because the prisoner had sent money from Calcutta to Patna by *hundis*, and, until that money reached its destination, the sending continued on the part of the prisoner. The Governor-General, in issuing a warrant of commitment under Regulation III. of 1818, does not in any way act judicially or as a Court of Justice, nor is he to be considered as having adjudicated that the person placed under personal restraint had been guilty of some specific offence. The proceeding is not in the nature of a conviction of the person placed under restraint : therefore the person so placed under restraint cannot, in any future proceeding taken against him, plead that he has been already tried, convicted, and punished. Letters, &c., found in a man's house after his arrest, are admissible in evidence, if their previous existence has been proved.—*Queen v. Amir Khan and others* (Appellants), 9 B. L. R. 36.

Act X., 1872, s. 67, Illustration (e).

Act X., 1872, s. 67, Illustration (f). I. L. R., 1 Mad. 17.

Act XVIII., 1862, ss. 29-35. Act X., 1872, s. 67, omitting the illustrations. Act IV., 1877 s. 21.

- Act X., 1872, s. 67, Illustration (a).
1 Mad. H. C. Rep., 193.
- 183.** An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

AN offence is not a continuing offence for the purposes of s. 183, unless a British Indian Court had jurisdiction at the place of the inception of the offence.—*Mad. H. C. Pro.*, Oct. 31, 1876; *Weir*, p. 21.

A RAILWAY-GUARD, being found to be drunk whilst in charge of a train on the Madras Railway, was removed from his train, and detained at a place outside the local limits of the jurisdiction of the High Court. He managed to effect his escape, and continued his journey to Madras. There he was charged under s. 27 of the Railway Act of 1862; but the High Court held that it had no jurisdiction.—*Reg. v. Malony*, 1 *Mad. H. C. Rep.* 193.

WHERE an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was, in fact, committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated, and proceeded to Calcutta by different trains, it was held that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party.—*Reg. v. Piran, alias Ganzar, alias Kureemun*, 3 *B. L. R.* 4, *App.*

- Act IV., 1877, s. 238.
Act LII., 1860, repealed.
Act IV., 1877, s. 239.
- 184.** All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office, or Arms and Ammunition, may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

- Act X., 1872, s. 69.
Act IV., 1877, s. 23.
- 185.** Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

- Act X., 1872, s. 157.
Act IV., 1877, s. 54.
- 186.** When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is, under some law for the time being in force, triable in British

India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinafore provided to appear before him, and send such person to the Magistrate's procedure the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate. Act X., 1872, s. 174.
Act IV., 1877, s. 55.
Act XXIII., 1840, s. 7.

When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

It is not essential to the validity of a warrant issued under this section that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction. He may issue such a warrant from a place in foreign territory.—Reg. v. Locha Kala, I. L. R., 1 Bom. 340.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued. Act X., 1872, s. 175.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

188. When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, Act XXI., 1879, s. 9.
or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India :

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

Act XXI., 1879, s. 10. **189.** Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions and exhibits to be received in evidence. depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Act XXI., 1879, s. 3. "Political Agent" defined. **190.** In sections 188 and 189, the expression "Political Agent" means and includes—

(a) the principal officer representing the British Indian Government in any territory beyond the limits of British India ;

(b) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

Act X., 1872, ss. 140, cl. (a), (b), and (c), 141, para. 1. **191.** Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

Act IV., 1877, ss. 25, 28. (a) upon receiving a complaint of facts which constitute such offence ;

(b) upon a police-report of such facts ;

Act X., 1872, ss. 140, cl. (d), 142, para. 1. (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

Act IV., 1877, s. 46. The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (a) or clause (b) of offences for which he may try or commit for trial.

Act X., 1872, ss. 23, 25, 27. The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (c) of offences for which he may try or commit for trial.

WHERE sanction has been given by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 191 without complaint.—*Empress v. Nipcha* and another, 1 L. R., 4 Cal. 712.

It is competent to a Magistrate to receive, and take action on, petitions relating to criminal charges when transmitted to him by post. Whether a Magistrate should do so or not, is, in each particular case, a matter within the Magistrate's discretion.—*Mad. H. C. Pro.*, Sep. 20, 1879.

WHERE an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath, necessary for the issuing of a summons or warrant, becomes immaterial. *Seemle*, a Magistrate taking a complaint, and issuing a summons thereon, acts, not ministerially, but judicially.—*Reg. v. Sadashivappa Pandurangappa*, 5 Bom. H. C. Rep. 29.

WHEN an accused person has been discharged by a Subordinate Magistrate, and the Magistrate of the District, after calling for the proceedings, considers that the order of discharge was improper, the proper course for the Magistrate of the district to adopt is to refer the proceedings for the orders of the High Court, and not to order a new trial by another Subordinate Magistrate.—*Imperatrix v. Gowdapa bin Venkugowda*, I. L. R., 2 Bom. 534.

WITH reference to clause b of s. 191, the police-report there alluded to can only be one made under the provisions of s. 155 by the orders of a Magistrate of the first or second class having power to try the case or commit the same for trial, or of a Presidency Magistrate, as only under s. 155 can a police-officer investigate and report upon a non-cognizable offence; and the case of *Reg. v. Jafar Ali*, 8 Bom. H. C. Rep., Cr. Ca., 113, has decided that the word report as used in this section does not mean any communication made by a police-officer, but a formal and legal report.

AN ORDER of a District Magistrate, directing the revival of certain criminal proceedings against the petitioners, who had been discharged under s. 253 by a Subordinate Magistrate, after evidence had been gone into, was quashed as illegal and *ultra vires*. As the case was one of improper discharge, and came before the Magistrate under s. 435, the proper and only course for him was to report it for orders to the High Court, which, if of opinion that that the accused were improperly discharged, might, under s. 439, have directed a re-trial. The case of *Sidya bin Satya* differed from.—*Mohesh Mistree* and another, in the matter of the petition of, I. L. R., 1 Cal. 282; 25 W. R. 30.

A MAGISTRATE can take cognizance of an offence without any complaint, only when it has come to his knowledge that such offence has been committed. A gratuitous suspicion or a belief founded on private information contained in an anonymous petition is not knowledge. A Magistrate is bound to disclose the information, private or otherwise, on which he acts, and issues warrants for the arrest of the accused. The warrant which a Magistrate is empowered to issue under s. 68 is not a warrant of committal, and does not justify detention of the party arrested for any longer period than is necessary for his production before the Magistrate, and as soon as the party has been brought before the Magistrate the warrant is exhausted.—*In re Mohesh Chunder Banerjee*, 13 W. R. 1; 4 B. L. R., App., 1.

S. 191 applies only to cases in which the private individual who is injured or aggrieved, or some one on his part, does not come forward to make a formal complaint; and, even in such cases, the jurisdiction of the Magistrate to arrest requires for its foundation a personal knowledge of the fact that an offence has been committed—knowledge derived from testimony legally given before him. The report of the police, or any statement not on oath or short of an actual formal complaint, is not sufficient to give the Magistrate jurisdiction to issue a warrant. A Magistrate may issue a warrant to an unofficial person, but he can only do so when he cannot obtain the assistance of the police, or when the urgency is imminent. A commitment to *hajut* before evidence is recorded is illegal.—*Reg. on the prosecution of Nobin Roy v. Surendro Nath Roy and others*, 13 W. R. 27; 5 B. L. R. 274.

192. Any District Magistrate or Sub-divisional Magistrate may

Transfer of cases by Magistrates.

transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Act X., 1872,
ss. 44, para.
1, 141, para.
2.

Act XI., 1874,
s. 6.

Any District Magistrate may empower any Magistrate of the first class, who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Act X., 1872,
s. 141, para.
2.

WHERE a Magistrate transfers a case, he is bound to give notice to the parties.—*Omrao Singh v. Fakir Chand*, I. L. R., 3 All. 749.

THIS section confers no authority on one Subordinate Magistrate to refer to another Subordinate Magistrate a case referred to him for disposal.—*Mad. H. C. Pro.*, June 15, 1874 ; *Weir*, p. 32.

IF any Magistrate, not being empowered by law, transfers a case erroneously and in good faith under s. 192, his proceedings shall not be set aside merely on the ground of his not being so empowered.—S. 529, *cl. f.*

WHERE a Magistrate has a personal and pecuniary interest in a case, he should not try it himself, but transfer it.—*Reg. v. Mehta Singh*, 4 B. L. R. 15 ; *Govt. of Bengal v. Heera Lall Dass and others*, 17 W. R. 39 ; 8 B. L. R. 422 (F. B.).

WHERE a case has once been made over by a Magistrate to a Deputy Magistrate for trial, the Magistrate has no jurisdiction to do anything more in the matter so long as the transfer to the Deputy Magistrate is in existence, but may withdraw the case from the files of the Deputy Magistrate.—*Reg. v. Mrs. Bellios*, 12 W. R. 54 ; 3 B. L. R. App. 155.

THE following is a case which, for the reasons therein given, the Magistrate should have transferred : The jailor of a district jail being accused by one of the jail-clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, L, the officiating Superintendent of the jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the trial on being questioned that they had no objection to the composition of the Bench, but after the charges had been framed the prisoner's counsel objected to the Bench as formed. The District Magistrate directed the Government pleader to prosecute, and both the District Magistrate and L gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up, *viz.*, that the prisoner had debited Government with the price of more oilseed than he actually purchased, and that he had received payment for certain oil at a higher rate than he credited to Government. The monies, the receipt of which was the subject of the first charge, were obtained by the prisoner on the strength of certain vouchers which he had induced L to sign as correct, and L had sanctioned the sale at the rates credited to Government. Upon the prisoner's giving the names of the witnesses he intended to call in his defence, L was deputed by his brother Magistrate to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record, "to be used by either party, though not themselves as evidence." The prisoner was convicted. On a motion to quash the conviction—*Held* that L had a distinct and substantial interest which disqualified him from action as Judge. *Held*, further, that although a Magistrate is not disqualified from dealing with a case judicially merely because in his character of Magistrate it may have been his duty to initiate the proceedings, yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and where he himself discovered the offence and initiated the prosecution, and where he is one of the principal witnesses for the prosecution. *Held*, further, that the recording the statements of the prisoner's witnesses was irregular. Criminal proceedings are bad unless they are conducted in the manner prescribed by law, and if they are substantially bad, the defect will not be cured by any waiver or consent of the prisoner.—*Queen v. Bholanath Sen*, I. L. R., 2 Cal. 23.

- Act X., 1872, s. 231. 193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Cognizance of offences by Court of Session.
- Act XI., 1874, s. 18. Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.
- Act X., 1872, s. 17. Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by Cases to be tried by Additional and Joint Sessions Judges ; general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial. **Act X., 1872, s. 18.**

THE fact of a commitment being made by a Joint Magistrate, who is an officer exercising the powers of a Magistrate, is sufficient under this section to enable the Sessions Judge to proceed with the trial; and it lies with the party impugning the correctness of the proceeding to show that there was no jurisdiction.—*Reg. v. Komnrooddee Sikhdar*, 13 W. R. 17.

A COURT of Session is competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate who is authorized to make a commitment, notwithstanding any irregularity or defect of form in recording the complaint.—*Revision in the case of Narain and Ram Naik*, 14 W. R. 34; 5 B. L. R. 600 (F. B.).

A COURT of Session cannot treat as a nullity the commitment of a Magistrate, F. P., on the ground that he investigated the case and committed the prisoner without a formal complaint being made to him, but should proceed to trial in the usual course.—*Reg. v. Ranchordas Nathubhai*, 4 Bom. H. C. Rep., Cr. Ca., 35; *Reg. v. Sadashivappa Pandurangappa*, 5 Bom. H. C. Rep., Cr. Ca., 29.

R, HAVING been committed by a Magistrate for trial by a Sessions Court on a charge, under s. 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty, on his trial, to the charge on which he was committed.

Upon the application of the Public Prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge, under ss 109 and 201 of the Penal Code, of abetting C, a female co-prisoner charged with having assisted in burying the body of the murdered person, required R to plead to the charge, and, having tendered a pardon to and examined C as a witness, convicted and sentenced R to two years' rigorous imprisonment.

Held that, as there was no evidence before the Magistrate to support the charge against R framed by the Sessions Judge, the action of the Judge was *ultra vires*, and the conviction on the added charge illegal.

Held also that, inasmuch as the Sessions Judge considered R more culpable than C, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an inquiry as to whether there was ground for a more serious charge against R.

Semble: The object of restricting a Sessions Court from taking cognizance of any offence (except as provided in ss. 236, 477, and 478 of the Criminal Procedure Code), unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary inquiry, which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him, and enables him to make his defence.—*Mutirakal Kovilagatha Rama Varma Raja* (Prisoner), Appellant, *v. The Queen*, I. L. R., 3 Mad. 351.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided. **Act X., 1875, s. 145.**

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104. **Charter, 1865, clause 24.**

195. No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate; **Act X., 1872, s. 467. Act X., 1875, s. 133. Act IV., 1877, ss. 40, 46.**

Act X., 1872, (b) of any offence punishable under section 193, 194, 195, 196, 199,
 s. 468. 200, 205, 206, 207, 208, 209, 210, 211, or 228 of
 Act IV., 1877, Prosecution for certain offences against public the same Code, when such offence is committed
 s. 41. justice. in, or in relation to, any proceeding in any Court,
 except with the previous sanction, or on the complaint, of such Court,
 or of some other Court to which such Court is subordinate ;

Act X., 1872, (c) of any offence described in section 463, or punishable under
 s. 469. section 471, 475, or 476 of the same Code,
 Act IV., 1877, Prosecution for certain offences relating to docu- when such offence has been committed by a
 s. 42. ments given in evidence. party to any proceeding in any Court in re-
 spect of a document given in evidence in such proceeding, except with
 the previous sanction, or on the complaint, of such Court, or of some
 other Court to which such Court is subordinate.

Act X., 1872, The sanction referred to in this section may be expressed in general
 s. 470, para. 1. Nature of sanction ne- terms, and need not name the accused person ;
 cessary. but it shall, so far as practicable, specify the
 Act X., 1875, Court or other place in which, and the occasion on which, the offence
 s. 134. was committed.
 Act IV., 1877, s. 43.

Act X., 1872, When sanction is given in respect of any offence referred to in this
 s. 470, para. 2. section, the Court taking cognizance of the case may frame a charge of
 any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked
 or granted by any authority to which the authority giving or refusing
 it is subordinate ; and no such sanction shall remain in force for more
 than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court
 of Small Causes, shall be deemed to be subordinate only to the Court to
 which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be
 deemed to be subordinate to the High Court, and every other Court of
 Small Causes shall be deemed to be subordinate to the Court of Session
 for the Sessions Division within which such Court is situate.

Offences alluded to in cl. a of s. 195.

S. 172. Absconding to avoid service of summons or other proceeding from a
 public servant.

S. 173. Preventing the service or the affixing of any summons or notice, or the
 removal of it when it has been affixed, or preventing a proclamation.

S. 174. Not obeying a legal order to attend at a certain place in person or by
 agent, or departing therefrom without authority.

S. 175. Intentionally omitting to produce a document to a public servant by a
 person legally bound to produce or deliver such document.

S. 176. Intentionally omitting to give notice or information to a public servant
 by a person legally bound to give such notice or information.

S. 177. Knowingly furnishing false information to a public servant.

S. 178. Refusing oath when duly required to take oath by a public servant.

S. 179. Being legally bound to state the truth, and refusing to answer questions.

S. 180. Refusing to sign a statement made to a public servant when legally re-
 quired to do so.

S. 181. Knowingly stating to a public servant on oath as true that which is
 false.

S. 182. Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.

S. 183. Resistance to the taking of property by the lawful authority of a public servant.

S. 184. Obstructing sale of property offered for sale by authority of a public servant.

S. 185. Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.

S. 186. Obstructing public servant in discharge of his public functions.

S. 187. Omission to assist public servant when bound by law to give such assistance. Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.

S. 188. Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.

Offences alluded to in cl. b of s. 195.

S. 193. Giving or fabricating false evidence in a judicial proceeding.

S. 194. Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.

S. 195. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.

S. 196. Using in a judicial proceeding evidence known to be false or fabricated.

S. 199. False statement made in any declaration which is by law received as evidence.

S. 200. Using as true any such declaration known to be false.

S. 205. False personation for the purpose of any act or proceeding in a suit or criminal prosecution or for becoming bail or surety.

S. 206. Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.

S. 207. Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of decree.

S. 208. Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.

S. 209. False claim in a court of justice.

S. 210. Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.

S. 211. False charge of an offence with intent to injure.

S. 228. Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

Offences alluded to in cl. c of s. 195.

S. 463. Forgery.

S. 471. Using as genuine a forged document which is known to be forged.

S. 475. Counterfeiting a device or mark used for authenticating documents described in s. 467 of the Penal Code, or possessing counterfeit marked material.

S. 476. Counterfeiting a device or mark used for authenticating documents other than those described in s. 467 of the Penal Code, or possessing counterfeit marked material.

OBJECTIONS to a Court's jurisdiction on the ground of want of sanction required by this section should be taken at the trial.—7 Mad. H. C. Rep. 58 ; Weir, p. 20.

THE discretion vested in a Civil Court of sanctioning a criminal charge of perjury is one that should be most carefully exercised.—Reg. v. Poosa Ram and two others, 6 W. R. 11.

NO APPEAL lies from the order of a Judge directing a prosecution under Act IV. of 1877, s. 41 (s. 195 of this Code).—In the matter of the petition of Janaki Nath Roy, I. L. R., 2 Cal. 466.

THE Magistrate should have made enquiries before charging the complainant with making a false charge under s. 211, Penal Code.—*Reg. v. Gour Mohun Singh*, 16 W. R. 44 ; 8 B. L. R., App., 11.

THE death of the husband does not put an end to a prosecution for adultery. All that the law requires is that the prosecution should be instituted by the husband.—*Mad. H. C. Pro.*, July 13, 1869 ; *Weir*, p. 29.

THE Appellate Court to which it is subordinate may sanction the prosecution of an offence against a Court of first instance, even if the offence is abetment.—*In re Ishan Chunder Ghose*, 15 S. W. R., C. R., 352.

THE sanction of the Local Government is necessary before a charge for keeping a lottery office under s. 10, Act XXVII of 1870, can be instituted.—*Government v. Nga Cho*, 15 W. R. 2 ; 6 B. L. R., App., 98.

WHERE a Civil Court gives sanction to a prosecution, it should state with precision the particular offence or offences for the prosecution of which it gives sanction.—*Reg. v. Ooma Moyee Debea*, 13 W. R. 25.

As soon as it becomes apparent that a complaint is of an offence falling under s. 195, and that it is made without sanction, the Magistrate is not competent to entertain it.—*Mad. H. C. Pro.*, Feb. 16, 1875 ; *Weir*, p. 29.

APPLICATIONS for sanction to institute proceedings under this section should, in the first instance, be made to the Court before which the alleged offence was committed.—*Mad. H. C. Pro.*, Feb. 27, 1871 ; *Weir*, p. 28.

A SESSIONS JUDGE has no authority under the law to interfere with the order of a Magistrate allowing a prosecution for false evidence.—*Gopal Mozumdar v. Hurro Soondery Boistonce*, 16 W. R. 59 ; 8 B. L. R., App., 20.

A COMPLAINT made at a police-station is not made before any Civil or Criminal Court, and, if it proves false, prosecution for it does not require the sanction of any Court.—*Govt. of Bengal v. Gokool Chunder Chowdhry*, 24 W. R. 41.

WHERE the Magistrate, before whom a witness gives false evidence, himself commits such witness for trial, his sanction of the prosecution under s. 195 will be implied.—*Reg. v. Muhammad Khan valad Inam Khan*, 6 Bom. H. C. R. 54.

THE Court declined in this case to say, under s. 195, that a conviction was bad, because the Judge who tried the case, and the Judge who sanctioned the criminal proceedings, was the same.—*Reg. v. Subal Chunder Gangooly*, 22 W. R. 16.

IT is necessary for a conviction under s. 211 of the Penal Code that the false charge should have been made to a Court or Officer having jurisdiction to investigate and send it up for trial.—*In re Jamaona, Empress v. Jamaona*, 1. L. R., 6 Cal. 620.

IT is the Court before which, not the Judge before whom, the offence is alleged to have been committed that is to give the sanction. A change of incumbent does not alter the constitution of the Court.—*Mad. H. C. Pro.*, Nov. 12, 1872 ; *Weir*, p. 29.

AN application for sanction to institute a prosecution on a charge of perjury should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed.—*Rajah of Venkatageri, Petitioner*, 6 Mad. H. C. Rep. 92.

THE Sessions Court may sanction a prosecution on a charge of giving false evidence of a witness who gave evidence in the preliminary enquiry, although he may not have been examined in the Sessions Court.—*Mad. H. C. Pro.*, Jan. 17, 1877 ; *Weir*, p. 29.

THE sanction accorded by a Civil Court in a case under s. 123, Penal Code, need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions given.—*Reg. v. Kadir Bux alias Kadir Mahomed*, 11 W. R. 17.

A MAGISTRATE is not competent to discharge the accused in a warrant-case, and order the complainant to be prosecuted for making a false complaint, until he has examined all the witnesses cited by the complainant.—*In re Gangoo Singh and others*, 2 Cal. Law Rep. 389.

WHERE a prosecution of an offence under ch. x. of the Penal Code is instituted by an inferior ministerial servant under sanction of the authority of his official superior, the provisions of this section are complied with.—Reg. v. Ram Golam Singh and others, 11 W. R. 22.

S. 195 refers to cases where a forged document has been put in evidence in a Civil or Criminal Court; in other cases a Magistrate is competent, *proprio motu*, to enquire into allegations of forgery, and no sanction is necessary.—Reg. v. Ramdharee Singh and others, 10 W. R. 5.

THE term sanction does not contemplate an application for sanction on the part of the Magistrate also. A Civil Court, before sanctioning investigation, must satisfy itself that there is ground for making an investigation into a charge.—Government v. Nawazish Ahmed Khan, N. A., N. W. P., 1862.

WHERE a Court thinks that there is sufficient ground for inquiring into a charge mentioned in s. 195, it should proceed under s. 476. Attention of the Court of Session in this case directed to Reg. v. Baijoo Lal (I. L. R., 1 Cal. 450).—Empress v. Gobardhan Das and another, I. L. R., 3 All. 62.

WHERE a charge of theft was reported by the police to be false, the Magistrate ought first to have enquired into the charge of theft, and passed some orders upon it, before proceeding under s. 211 of the Penal Code to enquire into the offence of false charge.—Bishoo Barik, 16 W. R. 67.

THE power of a superior Court to sanction a prosecution is not confined to cases in which the subordinate Court has disallowed sanction. As a matter of convenience, however, application should be made in the first instance to the Court which tried the case.—Mad. H. C. Pro., Aug. 18, 1874; Weir, p. 29.

WHEN a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery, or of using as genuine a false document, or of abetting forgery.—Reg. v. Mohesh Chunder Acharjee and another, 6 W. R. 20.

A DEPUTY Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211, Penal Code. Whether such sanction has been rightly or wrongly given, is a question for the accused to raise before a competent Court.—Empress v. Irad Ali, I. L. R., 4 Cal. 869.

THE discretionary power of a Civil Court, before or against which an offence mentioned in s. 195 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act XIV. of 1882.—*In re Madho Prasad*, I. L. R., 3 All. 508.

WHEN sanction has been given under this section by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 191, without complaint.—Empress v. Nipcha and another, I. L. R., 4 Cal. 712.

WHERE the sanction to the prosecution accorded under s. 195 extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply.—Reg. v. Woodernull Singh and Gungoo Singh, 10 W. R. 24; Reg. v. Raj Kishore Roy, 15 S. W. R., Cr. R., 55.

THE sanction referred to in this section, when given by any of the Courts empowered under the Act, cannot be disturbed by a superior Court. When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them.—Barkatulla Khan v. Rennie and another, I. L. R., 1 All. 17 (F. B.).

A COURT of Revenue is a Civil Court within the meaning of this section; and the declining by a Court of Revenue to sanction a prosecution under this section, under a mistaken view of the law, and under the impression that sanction was unnecessary, did not constitute sanction.—Empress v. Sabsukh and another, I. L. R., 2 All. 533 (F. B.).

HELD by the Judge making the reference, on the case being returned to him, that the accused persons having been prosecuted without the sanction required by this section, all the proceedings were invalid, and must be quashed, and the accused retried, sanction to their prosecution having been obtained.—*Empress v. Sabsukh and others*, 1 L. R., 2 All. 533.

WHEN a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined.—*In re Ram Prosad Hazra*, B. L. R., Sup. Vol., 426 (F.B.).

WHERE a prosecution for non-attendance in obedience to a summons was entertained without the sanction or complaint required by this section, it was held that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt.—*Reg. v. Ganu bin Taty Selav*, 5 Bom. H. C. Rep., Cr. Ca., 38.

THE Civil Court, in giving permission to prosecute, should, in a case of forgery, state distinctly what the document is for which a prosecution is to be entertained. The particular act or acts of forgery, and, in a case of perjury, the particular words which constitute the perjury, should be specified.—*In re Gobind Chunder Ghose and others*, 10 W. R. 41 ; 7 B. L. R. 28, S. N.

WHEN a person makes one statement before the Magistrate and a directly different statement before the Civil Court, he may be legally committed by the Magistrate on an alternative charge, provided the consent of the Civil Court has been obtained under this section to the institution of the charge connected with the statement made in that Court.—5 R. C. C. R. 7 ; also 8 W. R. 79.

It is not legally imperative that the sanction to prosecute should be in writing, but it is very desirable that such sanction or direction should be put in writing and attached to the record. That the prosecution is conducted before the authority which is to give the sanction is a good ground for assuming that sanction was given.—*Mad. H. C. Pro.*, Feb. 7, 1872 ; *Weir*, p. 29.

THE sanction required by s. 195 as a condition precedent to the prosecution of a party to a civil suit for forgery of a document given in evidence in such suit is unnecessary in the case of persons not parties to, but witnesses in, the suit who are charged with the forgery of the document jointly with a party to the suit.—*Eadara Virana and others v. Reg.*—1 L. R., 3 Mad. 400.

A STATION-STAFF officer having neither magisterial nor police powers, a false charge made before him does not amount to such a criminal proceeding as is referred to in s. 211 of the Penal Code. A "false charge," to make the above section applicable, must be made to a Court, or to an officer who has powers to investigate and send it up for trial.—*In re Janaria*, 8 Cal. Law Rep. 215.

FOR the purpose of this section, the Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involves more than Rs. 5,000, and an appeal lies direct to the High Court from the decision of that Court in that matter.—*Imperatrix v. Lakshman Sakharan Vamanhari and Balogi Krishna*, 1 L. R., 2 Bom. 481.

A COMMITMENT for trial under the provisions of s. 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused, is not illegal, merely because the complaint which the accused made has not been judicially enquired into, but is based on the report of the police that the case was a false one.—*Empress v. Salik Roy*, 1 L. R., 6 Cal. 582 ; 8 Cal. Law Rep. 255.

SANCTION was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken no steps to prosecute for three months after the sanction was obtained. **HELD** that the Magistrate had power to dismiss the complaint.—6 Mad. Rep. Rul. XV.

A STATEMENT made to the police of a suspicion that a particular person had committed an offence is not "charge" within the meaning of s. 211 of the Penal Code, nor does it amount to the institution of a criminal proceeding, and the person

making the statement cannot, on the suspicion being proved to be unfounded, be convicted under that section.—*In re Bramannud Bhattacharjee*, 8 Cal. Law Rep. 233.

A PERSON not committing an offence under ch. x., Penal Code, is viewed by the law not personally in regard to the injured party, but to him as a representative of the public; and this is why discretion is given to the head of the department to prosecute or not. The person injured can nevertheless have his remedy by an action for damages should no criminal prosecution be sanctioned.—*Moulvi Abdool Lutef*, 9 W. R. 31.

THE offence of obstructing a public servant in the discharge of his public functions is not cognizable by a Magistrate, except with the sanction or on the complaint of the Court or public servant concerned, or, if such servant is an inferior ministerial servant, with the sanction or on the complaint of his official superior.—*Dukhoo Pein v. Chundro Kant Chowdhry*; *Pochai Sirkar and Kheru Poramanick*, 3 W. R. 68.

WHERE a Civil Court sends an offence under s. 193 of the Penal Code to a Magistrate for investigation and commitment, if necessary, the Magistrate cannot return the case to the Civil Court, nor can the Civil Court, after it has sent a case to the Magistrate, commit it to the Sessions. The Magistrate should himself proceed with the case and take evidence therein.—*Reg. v. Jan Mahomed*, 12 W. R. 41; 3 B. L. R. 47.

THE sanction of a District Superintendent of Police to the prosecution of a charge of giving false information, not to such District Superintendent himself, but to an Assistant District Superintendent, is no sufficient sanction under s. 195. The words "inferior ministerial officer" refer to public servants of a lower grade than an Assistant Superintendent of Police.—*Reg. v. Ootum Chand and another*, 2 N. W. P. H. C. R. 287.

ANY Civil Court which has the power of calling before it the proceedings and evidence of a suit in which forgery is alleged to have been committed may, if satisfied after a preliminary inquiry that the charge is proper for investigation, give its sanction to the charge being entertained and investigated by the Magistrate, notwithstanding that the subordinate Court refused its sanction to the prosecution.—*Dinobundo Chuckerbutty*, Petitioner, 5 W. R., Mis., 6.

AN instruction to the Magistrate of the District by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it, to prosecute a person for giving false evidence before it in such case, does not amount to sanction to a prosecution of such person for such offence, within the meaning of s. 195, that section supposing a complaint, or at least an application for sanction for a complaint.—*Empress v. Gobardhan Das*, I. L. R., 3 All. 62.

IN a case in which the High Court was asked under s. 195 to sanction a prosecution for giving false evidence of a plaintiff in a suit before a Small Cause Court, which Court had refused such leave to defendant, it was held that the High Court would not be justified in exercising the discretion vested in them by s. 195, unless it appeared very clearly that there were strong grounds for granting the sanction.—*Money Mohun Dey v. Denonath Mullick*, 22 W. R. 11.

THE Mámílatdár's Court, constituted by Bombay Act III. of 1876, is a Civil Court within the meaning of s. 195 of the Code of Criminal Procedure. Therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mámílatdár's Court, shall not be entertained in the Criminal Courts except with the sanction of the Mámílatdár's Court, or of the High Court to which it is subordinate.—*In re Savanta*, I. L. R., 5 Bom. 137.

THE prosecution of a police-patel for an offence committed by him in his official capacity as such needs no previous sanction. The provisions of the Bombay Village Police Act (VIII. of 1867), s. 9, as amended by the Bombay Police Amendment Act (I. of 1876), render a police-patel removeable from his office without the previous sanction of Government, and, therefore, s. 195 of the Criminal Procedure Code does not apply.—*Imperatrix v. Bhagwan Devraj*, I. L. R., 4 Bom. 357.

FOR the purpose of this section a Magistrate of the 1st class is subordinate to the Magistrate of the district. A sanction given by the latter to prosecute a person for intentionally giving false evidence before the former is, therefore, legal and

sufficient, notwithstanding the refusal by the former to give such sanction himself. *Semble* : that the Sessions Court has not power to give such sanction.—*Imperatrix v. Padmanabhpai*, I. L. R., 2 Bom. 384. So held by F. B. in I. L. R., 2 All. 205.

A CONTEMPT having been committed before a Magistrate and Collector who was then sitting in the latter capacity, this officer, as Magistrate, ordered the accused to be tried under s. 185, Penal Code, but omitted to record his formal sanction to the prosecution as Collector. The High Court held that as the proceedings were perfectly regular in other respects, the omission on the part of the officer to sign himself as Collector did not vitiate the proceedings.—*Reg. v. Gooroo Churn Mozoomdar*, 2 W. R. 52.

WHERE a person was accused under s. 182 of the Penal Code with having given false information to a head-constable, it was held that the provisions of s. 195 of the Code of Criminal Procedure had been sufficiently complied with, inasmuch as the lower Appellate Court stated in its judgment that "the case had been forwarded under s. 182 by the officer in charge of the District Superintendent's office"—the District Superintendent being the official superior of the head-constable.—*Reg. v. Grish Chunder Sirkar*, 19 W. R. 33.

A PERSON who makes a false statement upon oath before a police-patel acting under Act VIII. of 1867 (Bombay), s. 13, gives false evidence within the meaning of Act XLV. of 1860, s. 191, and is punishable under s. 193 ; but his trial for that offence requires no sanction, a police-patel not being a Criminal Court within the definition of the Code of Criminal Procedure, although offences under ch. xiv. of this Code, committed before the same officer, cannot be tried without a sanction.—*Empress v. Irbásápá*, I. L. R., 4 Bom. 479.

WHERE a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under ss. 463 and 471 of the Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial in addition to framing a charge under these sections, added a head of charge under s. 193 (giving false evidence), it was held that the Magistrate had no jurisdiction to commit the accused for trial on the last-mentioned head of charge.—*Reg. v. Subi Sani*, 8 Bom. II. C. R. 28.

A COMPLAINT having been made before a Magistrate, that officer directed an enquiry to be made by the police, and on such enquiry being held it was reported to the Magistrate that the charge was false. Thereupon sanction to prosecute the complainant was granted under s. 211 of the Penal Code. *Held* that, inasmuch as the Magistrate on receipt of the police-report had not given the complainant an opportunity of substantiating the complaint, the Court had no power to sanction the prosecution.—*In re Sakhina Bibee*, 8 Cal. Law Rep. 387 ; I. L. R., 7 Cal. 87.

THE object of the law in requiring such a sanction to be given, is to ensure that the prosecution shall be instituted after due consideration on the part of the Court before or against which the offence was committed, or of some Court to which that Court is subordinate. So, where that object had been fully attained, though sanction had not specially been given, the Court refused to interfere.—*Mahommed Hossain*, 16 W. R. 37. Another and the primary object is to prevent parties to a suit from oppressing and harassing their adversaries by criminal proceedings.—*Radhanath Banerjee*, Marsh. 407.

WHEN it is intended to charge a person with having made a false statement in the Court of a Magistrate or (alternatively) a false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. A sanction for a prosecution under s. 195 must designate the Court where the false statement was alleged to have been made, and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted.—*In re Balaji Setaram*, 11 Bom. II. C. Rep. 34.

A JUDGE has no power to send a case to a Magistrate, except when, after having made such preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground (i.e., ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge, and that the

Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to enquire, and that the order was bad because the Judge had made no preliminary enquiry, and because it was too vague and general in its character.—*In re Baijoo Lall*, 1 L. R., 1 Cal. 450.

IN a case in which a false charge was brought, a Magistrate gave the accused, A, permission to prosecute the complainant, B, of an offence under s. 211, Penal Code. The Magistrate tried the complaint of A as a complaint under s. 211, but he subsequently framed a charge against B under s. 182, Penal Code, and punished him under that section. *Held* that the offences under ss. 182 and 211, Penal Code, being offences under ch. xix. of the Code of Criminal Procedure, the Magistrate was wrong in framing the charge under s. 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of B.—*Raj Coomarr v. Kirtee Ojha*, 13 W. R. 67; 7 B. L. R. 29, S. N.

IN a case of giving false evidence, the charge should show the particular matter in respect of which the accused is put upon his trial: and only so much of the prisoner's statement ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s. 193, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must, in each case, be considered before it be held that the offence has been committed.—*Reg. v. Soonder Mohobbee*, 9 W. R. 25.

THE object of the sanction required by s. 195 is to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court is subordinate. Where a Magistrate perused the papers of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers of the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner charging him with giving false evidence, it was held that the issue of the warrant was sufficient sanction under s. 195 on the part of the Magistrate.—*Reg. v. Mahomed Hossain*, 16 W. R. 37.

SANCTION for the prosecution of the accused was accorded by an Assistant Sessions Judge in the following terms: "There is no doubt whatever that Tai, Baji, and Bala, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here" (*i.e.*, I give my sanction) "for their prosecution." *Held* that this gave sufficient sanction for the prosecution of the accused under s. 193 of the Indian Penal Code, and that it is not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused is permitted to be prosecuted.—*Reg. v. Tai*, wife of Nanchand, 8 Bom. H. C. Rep. 24.

WHERE a charge had been preferred against a person, and the Magistrate, before whom it was heard, after hearing the statement of the complainant, but not those of the witnesses, dismissed the complainant; and subsequently, on the application of the person charged, granted him leave under s. 195 to prosecute the complainant for bringing a false charge:

Held that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done:

Held also that there is a distinction in the proceedings to be adopted when a sanction is given under s. 195, and the institution by the Court of its own motion of proceedings under s. 476.—*In re Gyan Chunder Roy v. Protap Chunder Das*, 1 L. R., 7 Cal. 208.

IN a suit by A for arrears of rent above Rs. 100, a decree was passed against B, C, and D, wherein certain documents filed by them were held to be forgeries. A applied for, and obtained an order from the Deputy Collector who tried the suit, for leave to prosecute B and C in the Criminal Court. A afterwards applied to the Collector for leave to prosecute B, C, and D, whereupon the Collector issued the following order: "Sanction has already been given once by the Deputy Collector. I, however, have no objection to give it a second time, as the petitioner desires."

D was convicted by the Sessions Judge on a charge under s. 471, Penal Code. On appeal by D, it was held that no proper leave had been obtained to prosecute D, and this defect was not cured by the subsequent proceedings, and the conviction must be quashed.—*Reg. v. Mahina Chandra Chakravarti*, Appellant, 7 B. L. R. 26.

THE Courts that have jurisdiction to grant a sanction to proceedings under s. 195 are the Courts before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate.

Per Garth, C.J.—Where a case is settled without evidence being gone into, the Court in which the suit was brought, even if it have power to sanction criminal proceedings against any of the parties to such suit under s. 195, is guilty of great impropriety and indiscretion in so doing, inasmuch as it can have had no opportunity of judging of the *bona fides* of the claim or defence. *Semble*.—A petition presented under Reg. XVII. of 1806, not requiring verification, cannot, from the fact of its being verified unnecessarily, be made the subject of a prosecution for giving false evidence.—In the matter of the petition of Kasi Chunder Mozumdar. *Jugut Chunder Mozumdar v. Kasi Chunder Mozumdar*, I. L. R., 6 Cal. 440.

B CHARGED certain persons before a police-officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B on a charge of making a false charge of an offence—an offence punishable under s. 211 of the Penal Code—and convicted him of that offence. *Held* that, as such false charge was not preferred by B before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 195 and 487, Code of Criminal Procedure, were inapplicable, and such Magistrate was not precluded from trying B himself, nor was his sanction or that of some superior Court necessary for B's trial by another officer. *Empress v. Kashmiri Lal* (I. L. R., 1 All. 625) distinguished. Observations by Stuart, J., on the careless manner in which the charge was framed.—*Empress v. Baldeo*, I. L. R., 3 All. 322.

A CHARGE laid against certain persons before the police having been reported false by that body, the person who made the charge complained to the Magistrate of the district, who directed a fresh investigation. The charge was again reported false. The complainant thereupon filed a petition, in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer. No further investigation having taken place, the complainant was ordered to be prosecuted under s. 211 of the Indian Penal Code, and, on trial, was convicted and sentenced. On appeal to the High Court, it was held that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him. *Per Maclean, J.*—The proper principle which should guide a Magistrate is that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police-enquiry, he would be justified in proceeding against a person who has made a complaint to the police which has been found to be false; but if a complaint is made, that complaint must be dealt with judicially. It is unfair even then to proceed against the complainant without hearing any witnesses whom he may wish to examine. *Per Mitter, J.*—Although a Magistrate has power to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under s. 211 of the Penal Code should be granted.—*In re Chuckro-dhur Potti*, 8 Cal. Law Rep. 289.

196. No Court shall take cognizance of any offence punishable under Chapter VI. of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

SECTION 294A relates to lotteries.

CHAPTER VI. of the Penal Code relates to offences against the State.

Act X., 1872,
s. 465.

Act X., 1875,
s. 131.

Act IV., 1877,
ss. 38, 46.

SECTION 127 of the Penal Code relates to the receiving of property taken by waging war against any Asiatic Power in alliance or at peace with the Queen, or by committing depredation on the territories of any Power in alliance or at peace with the Queen.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Act X., 1872, s. 466, paras. 1, 2, 3 & 4. Act X., 1875, s. 132. Act IV., 1877, ss. 39, 46.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

A MAHALKARI falls within the class of public servants contemplated in s. 197. A sanction for his prosecution by the District Magistrate is therefore sufficient.—*Imperatrix v. Lakshman Sakharam Vamanhari and Balogi Krishna*, I. L. R., 2 Bom. 481.

A MUNICIPAL Corporation is not a public servant within the meaning of Act IV. of 1877, and may therefore be prosecuted under the Penal Code without the sanction of the Government required by that section.—*Empress v. Municipal Corporation of the Town of Calcutta*, I. L. R., 3 Cal. 758.

S. 197 extends to all acts ostensibly done by a public servant, *i.e.*, to acts which would have no special signification except as acts done by a public servant. Therefore a *mahalkari*, charged with fabricating the proceedings of a case decided before himself, could not be tried on that charge except with the sanction specified in the section.—*Imperatrix v. Lakshman Sakharam Vamanhari and Balogi Krishna*, I. L. R., 2 Bom. 481.

THE prosecution of a police-patel for an offence committed by him in his official capacity as such needs no previous sanction. The provisions of Act VIII. of 1867 (Bombay), s. 9, as amended by Act I. of 1876 (Bombay), render a police-patel removable from his office without the previous sanction of Government, and therefore s. 197 does not apply.—*Empress v. Bhagwan Devraj* on appeal by the Govt. of Bombay, I. L. R., 4 Bom. 357.

THE sanction for the prosecution of a kulkarni for making a false report as a public servant, required by s. 197, may be given by the *mámlatdár* or by the patel to which such kulkarni is subordinate. The sanction of the Collector is not necessary for that purpose. A kulkarni who makes a false report with reference to an offence committed in his village with intent, &c., is punishable under s. 218 of the Penal Code.—*Reg. v. Malhar Ramechandra*, 7 Bom. H. C. Rep. 64.

THE Courts of the Head Assistant Magistrate and of the Deputy Magistrate have jurisdiction to try a District Munsif on charges of extortion in the course of the exercise of his judicial functions. The Sessions Judge is a proper person to sanction the prosecution. By Innes, J.—The rule (laid down in s. 8, Madras Regulation VI. of 1816) requiring the committal of such cases to the Court of Session has been impliedly, though not expressly, repealed.—*C. Narayanasami Ayyar*, Petitioner, 7 Mad. H. C. Rep. 182.

THIS section, by implication, vests in the Court or Authority to whom the Judge or other public servant not removable, &c., is subordinate, the power of sanctioning or directing such prosecution. It does not say that the Government must give the power, but that it shall exist, unless limited or reserved. Every Court or Authority,

therefore, has it, unless there is a limitation. It is very desirable that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative. *Semble*.—The objection (to the want of sanction) should be taken at the trial.—*B. Kristna Rau, Appellant, 7 Mad. H. C. Rep. 58.*

THE charges which under this section cannot be entertained against the officers herein described, except under the sanction or direction of the Local Government or other competent authority, relate to offences which can be committed by public servants as such, and which are specified in ch. ix., Penal Code, and to no other. Offences committed against the person or property of individuals, by one who happens to be a public servant, are not necessarily committed by him as such public servant in the sense in which those words are used in the Penal Code, and, unless committed in that character, must be regarded as the acts of individuals in their private capacity. Charges founded on such acts do not need sanction of Government, but should be dealt with in the same way as charges against individuals ordinarily are. —*H. C. C. O., No. 20 of Oct. 4, 1864; Wilkins, p. 114.*

S. 197 requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced; and until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. Where a complaint charged a person who was one of the public servants mentioned in s. 197 with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.—*Reg. v. Parshram Keshav, 7 Bom. H. C. Rep. 61.* Offences therefore committed by public servants as individuals in their private capacity do not require the consent of Government, but are to be dealt with as ordinary charges. See the circular of the Calcutta High Court, *supra*. The discrepancy between the decision in the Bombay case and that at Calcutta is not real, and is explained away by Mr. Justice Melville's judgment in the Bombay case.

THE Local Government, in sanctioning or directing (under s. 197 of the Criminal Procedure Code) a charge against a public servant of an offence as such public servant, has power to limit its sanction, by giving directions as to the person by whom, and the manner in which, the prosecution is to be preferred and conducted; and a Court has no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions. *Semble*.—The Local Government has power in the like case to direct that the accused public servant shall be tried before a specified tribunal, being one having jurisdiction in that behalf. Therefore, where the sanction directed that the accused public servant should be prosecuted upon such charges as Mr. C might be prepared to prefer against him, and there was nothing on the record to shew, nor did it otherwise appear, that Mr. C had preferred any charge against, or taken any part in the prosecution of, the accused public servant, the High Court quashed the conviction of the accused, as having been without jurisdiction.—*Reg. v. Vinayak Divakar, 8 Bom. H. C. R. 32.*

Act X., 1872,
s. 142, para.
2.

Act IV., 1877,
s. 29.

198. No Court shall take cognizance of an offence falling under Chapter XIX. or Chapter XXI. of the Indian Penal Code, or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Prosecution for breach of contract, defamation, and offences against marriage.

Act X., 1872,
ss. 478, 479.

Act IV., 1877,
s. 45. See 1
O'Kin. 524.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Prosecution for adultery or enticing a married woman.

A MINOR husband cannot be represented by another for the purpose of instituting a prosecution.—*Mad. H. C. Pro., Feb. 7, 1871; Weir, p. 29.*

THIS section does not require the consent of the husband to a prosecution for house-trespass with intent to commit adultery.—Mad. H. C. Pro., June 1, 1868, and Nov. 15, 1869; Weir, p. 29.

THE death of the husband does not put an end to a prosecution for adultery. All that the law requires is that the prosecution should be instituted by the husband.—Mad. H. C. Pro., July 13, 1869; Weir, p. 29.

A COMPLAINT was made to a Magistrate accusing a certain person of having taken or kept the wife of the complainant. In the course of the proceedings it appeared that the wife had committed bigamy (s. 494, Penal Code). The Magistrate, without a further complaint, committed the woman alone for trial by the Court of Session. *Held* that the Magistrate had acted within jurisdiction; s. 198 of the Code of Criminal Procedure being designed to prevent a Magistrate from enquiring without complaint into a case connected with marriage; but when a case is properly before the Magistrate, he may proceed against any person implicated.—*In re Ujjalla Bewa*, 1 Cal. Law Rep. 523.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. A Magistrate taking cognizance of an offence on complaint Act X., 1872, s. 144, paras. 1 and 2.
Examination of complainant. shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing, and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192: Act X., 1872, s. 44, para. 2.

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing: Act IV., 1877, s. 30.

(c) when the case has been transferred under section 192, and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant. Act X., 1872, s. 44, para. 2.

UNTIL the complainant has been examined, process cannot be issued, nor can the complaint be dismissed.—4 Mad. H. C. Rep. 62.

A CHARGE, properly laid under the Penal Code, should be investigated, even if the case be one in which a civil action will lie.—*Khosal Singh v. Toolshee Chowdhry* and others, 10 W. R. 40.

WHEN there is no probability of further action being taken on any complaint, the case should, after a reasonable time, be removed from the file.—Mad. H. C. Pro., Feb. 18, 1869; Weir, p. 7.

A COMPLAINT made in the form of a police-report may be dismissed without examining witnesses, if the facts stated in the report constitute no offence.—Mad. H. C. Pro., July 24, 1875; Weir, p. 7.

IT is not competent to a Subordinate Magistrate to direct a complainant who brings a charge of petty theft or assault ordinarily within the cognizance of heads of villages to seek redress from the head of the village. Complaint having been duly made, the Subordinate Magistrate is bound to proceed under the section, and dispose of the case according to law.—Mad. H. C. Pro., Dec. 18, 1873; Weir, p. 6.

AFTER complainant's preliminary examination, the case was referred to the police for report, and complainant had notice to appear on the 6th November to hear the report. On the 31st October, the Assistant Magistrate dismissed the case upon the report of the police-officer without giving complainant an opportunity to show cause against the dismissal. His order was set aside by the High Court, and he was directed to conform to Circular No. 5A, dated 7th September 1868.—*Bullee Singh v. Kanai Chowdhry and others*, 17 W. R. 2.

THE prescribed mode of ascertaining what a complaint is, is to examine the complainant, and reduce his examination to writing. If it is then ascertained that the complaint is not of an offence, the order dismissing it should still be recorded in writing. It is irregular to endorse and return to a party his petition or complaint alleging an offence. Such papers form part of the records of the Court, and should not be returned to the party. What the party is entitled to is an authenticated copy of the Magistrate's order on the proper stamp.—*Mad. H. C. Pro.*, June 10, 1869; *Weir*, p. 6.

A CHARGE of burglary and theft having been preferred against two persons, the Magistrate before whom the charge was laid, after comparing the petition of complaint with the papers submitted to him by the police, who had made an enquiry, and reported the charge to be false, directed, without having taken the examination of the complainant, that the case should be struck out, and that proceedings should be instituted against the complainant under s. 182 of the Penal Code. Proceedings were accordingly taken, and the complainant was ultimately tried and found guilty of an offence under s. 211. *Held* on appeal that the proceedings had been irregular, and should be quashed; that the Magistrate should be directed to re-open the enquiry into the charge of burglary and theft, first examining the complainant; and that, if after such examination, he should be of opinion that the charge was false, the appellant might be proceeded against under s. 211 of the Penal Code.—*In re Biyogi Bhagut*, 4 Cal. Law Rep. 134.

Act X., 1872,
s. 145.

201. If the complaint has been made in writing, and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Procedure by Magistrate not competent to take cognizance of the case.

Act X., 1872,
s. 146.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant, and considering the result of the investigation (if any) made under section 202, there is, in his judgment, no sufficient ground for proceeding.

Dismissal of complaint. Act X., 1872,
s. 147, para-
1.
Act IV., 1877,
s. 32.

A COMPLAINT must not be dismissed without examining the complainant.—Reg. v. Horaik Chunder Nowlaka, 8 W. R. 12.

THIS section was not intended to enable a Magistrate to examine witnesses in the absence of the accused.—Tuki Mahomed Mundul v. Kisto Nath Rai, 15 W. R. 53.

THE identity of the matter complained of, and of the person complained against, is the obvious criterion of the sameness of a complaint.—Mad. H. C. Pro., Nov. 14, 1878; Weir, p. 8.

A COMPLAINT made in the form of a police-report may be dismissed without examining witnesses if the facts stated in the report constitute no offence.—Mad. H. C. Pro., July 24, 1875; Weir, p. 7.

IF, after hearing the complaint, the Magistrate does not consider that any criminal charge has been made out, he is not bound to go any further, but may dismiss the case at once.—Batool Nushyo v. Bhugloo, 10 W. R. 60.

WHEN a complaint has been dismissed by a Magistrate under s. 203, no other Magistrate can again entertain the same complaint without an order from some one of the authorities mentioned in s. 437.—Mad. H. C. Pro., March 28, 1878; Weir, p. 8.

AN ORDER of dismissal under s. 124 of Act IV of 1877 (s. 203 of this Code), passed on account of the complainant's absence, was held not to operate as an acquittal, and not to bar the institution of fresh proceedings on a fresh complaint.—Empress v. Thompson, 1 L. R., 6 Cal. 523; 8 Cal. Law Rep. 106.

It is against the law for a Magistrate to throw out a complaint only on the strength of reports made to him by police-officers to whom the case has been referred without first examining the complainant.—*In re Harrik Chand Nowlaka and others*, 8 W. R. 12; 2 Mad. Jur. 242; Baroda Kant Mookerjee v. Kalli Bhuttacharjee, 9 W. R. 21.

WHERE a case has once been made over by a Magistrate to a Deputy Magistrate for trial, the Magistrate has no jurisdiction to do anything more in the matter so long as the transfer to the Deputy Magistrate is in existence. The Magistrate may withdraw the case under s. 539 from the files of the Deputy Magistrate.—Queen v. Mrs. Belilios, 12 W. R. 53; 3 B. L. R., App., 151.

IN a case in respect of which a warrant might issue, and which is triable under this chapter, a Magistrate ought to order the discharge of the accused persons, although they are in attendance, if he thinks that there is no case of a criminal character made out against them.—Reference in the case of Niamutulla v. Gopal Shaha and others, 14 W. R. 63; 6 B. L. R., App., 6.

A CHARGED B before a Magistrate for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the police, and reported to be false. The Magistrate, without recording the complaint, sent for the police papers, and dismissed the case. Held that the proceedings were illegal, that the Magistrate was bound to record the examination of the complainant before he could dismiss the complaint.—Dulali Bewa v. Bhubun Shaha, 3 B. L. R. 53.

A, A SILK-MANUFACTURER, complained before the Magistrate that B had broken his contract to work as a silk-spinner for three years in his silk-factory, and prayed that, under Act XIII. of 1859, his complaint might be inquired into. No *prima-facie* proof of B having received an advance being adduced, the Magistrate rightly dismissed the complaint under this section. In order to sustain a conviction under Act XIII. of 1859 against a workman, it is essential to show that the latter refuses to perform work in respect of which he has received an advance.—4 R. C. C. R. 31, Cal. H. C., Sep. 7, 1867.

A PERSON made a complaint to the police that the accused had enticed away his wife (a non-cognizable offence), and committed theft (a cognizable offence). The police inquired into the latter offence only, and, finding no *prima-facie* case made out, reported to that effect to a Magistrate, who directed that that offence be expunged from the list of reported offences: *Held* that, under the circumstances, there had been no dismissal of the complaint in respect of the former offence; and that there was no bar to the complaint into that offence being taken up and proceeded with.—*The Government of Bombay v. Shedápe*, 1 L. R., 5 Bom. 405.

A DISTRICT Magistrate, having removed a case to his own file from that of the Joint Magistrate after the latter had issued warrants upon the footing of the complaint, immediately suspended the warrants, and dismissed the complaint, on the ground that, in his executive capacity, he had previously made some inquiry into the matter out of which the complaint arose, and that, on information so received, he was of opinion that the complaint ought to be rejected. *Held* that the Magistrate ought to have proceeded with the case as from the stage at which he found it, and that he committed a material error by not doing so.—*Raghoo Parirah*, Petitioner, 19 W. R. 28; 10 B. L. R., App., 26.

A MAGISTRATE before whom a complaint had been made, after examining the complainant, but without examining his witnesses, dismissed the complaint. Shortly afterwards the person accused applied to the Magistrate and obtained sanction to prosecute the complainant under s. 211 of the Penal Code, and proceedings were thereupon commenced before another Magistrate, who subsequently committed the original complainant to the Court of Session. No application was made that a further enquiry might be made, notwithstanding the order of dismissal. *Held* that the proceedings in the original complaint had been terminated in a regular manner, and therefore the order sanctioning the prosecution was not illegal by reason of the Magistrate not having examined the witnesses of the complainant.—*In re Gyan Chunder Roy*, 8 Cal. Law. Rep. 267; 1 L. R., 7 Cal. 208.

A CHARGE of theft was preferred by the petitioner, on the 7th October 1878, before the police, who thereupon instituted enquiries, which subsequently resulted in their finding the charge unproved. Meanwhile, on the 15th October, the charge was repeated in a complaint before the Magistrate of the district, who directed the complainant and his witnesses to attend on a particular day, but subsequently, without having examined them or the complainant, referred the matter to the Sub-Deputy Magistrate. That officer having reported the charge to be false, the Magistrate, on the 9th November, wrote upon the police-report, which had meanwhile (on the 26th October) been submitted to him, the following direction, *viz.*, "show as false." On the 19th November a counter-prosecution under ss. 211, 182, and 500 of the Penal Code was sanctioned, and eventually, on the 22nd May 1879, resulted in the petitioner being convicted. While the counter-prosecution was pending, the petitioner on the 22nd April applied to the Magistrate to proceed with his complaint according to law, but was informed that his complaint was dismissed. On the following day the Magistrate recorded the following order: "Dismissed in accordance with my decision recorded in the police-report." Under s. 147 of the Criminal Procedure Code (s. 203 of this Code), *held* that the complaint had been improperly dismissed, and that the order of the Magistrate, dated 23rd April 1879, must be set aside.—*Sheik Irad Ali v. Nussibunnissa Bibee*, 4 Cal. Law. Rep. 534.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Act X., 1872,
ss. 147, para.
3, 148, para.
1, 149.

Act XI., 1874,
s. 1.
Act IV., 1877,
ss. 27, 33, 34,
35.

204. If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue

a warrant, or, if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of Act X., 1872, section 90. ss. 118, para. 2, 150.

A COMPLAINANT's deposition must show some grounds for proceeding before a Magistrate can legally issue a summons.—Hurro Nath Roy, Petitioner, W. R. Sp. 33.

THE Deputy Magistrate was held to have been wrong in summoning the parties charged before examining the complainant.—Rujub Mundle v. Lochun Mundle, W. R. Sp. 37.

A MAGISTRATE is bound at least to examine a complainant before he can exercise the discretionary power to issue process or dismiss his complaint.—Rangasawuni Gounden, Petitioner; Sabapathy Gounden and 5 others, Counter-petitioners, 4 Mad. H. C. R. 162.

THE error of a Deputy Magistrate in proceeding by warrant instead of by summons furnishes no ground for quashing his proceedings. The High Court has no power to interfere on a question of evidence.—Aneef Putney v. Ramsoonder Chackerbutty, 1 W. R. 16.

THE further proceedings allowed by the Code of Criminal Procedure, s. 204, can only be taken in cases where the complainant has been alone heard, and not where he has had the advantage of having his witnesses heard. In the latter case a dismissal would amount to a verdict of acquittal against the accused parties, and render a second trial on the facts impossible.—Nityanundo Bur v. Kalachand Bur and others, 24 W. R. 75.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader. Act X., 1872, s. 151
Magistrate may dispense with personal attendance of accused. Act IV., 1877, s. 37.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided. Act IV., 1877, s. 37.

THE complainant, if present to give evidence, may employ a legal practitioner to conduct the prosecution.—Mad. H. C. Pro., Sep. 15, 1862.

THERE is no appeal against the order of the Magistrate refusing to dispense with the personal attendance of an accused.—Cal. H. C., 567 of 1862.

A COMPLAINT may be made, and the prosecution conducted, by any person acquainted with the facts of the case, but the party injured cannot authorize another, by a power-of-attorney, to appear for him.—Mad. H. C. Pro., July 16, 1862.

WHEN a Magistrate allowed a defendant to appear by agent during an inquiry under this chapter, it was held that he had no power to direct that defendant should not appear by agent at the Court of Sessions.—Queen v. Hurnath Roy, 2 W. R. 50.

WHERE the personal attendance of an accused is dispensed with, a recognizance-bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear, either in person or by an agent. A Magistrate has no legal authority to secure the attendance of an agent by such a bond.—Reg. v. Lallubhai Jassubhai, 5 Bom. H. C. Rep. 64.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION
OR HIGH COURT.

Act X., 1872, **206.** Any Presidency Magistrate, District Magistrate, Sub-divisional
 s. 143, ex- Magistrate, Magistrate of the first class, or any
 tended to Power to commit for Magistrate empowered in this behalf by the
 High Court, trial. Magistrate empowered in this behalf by the
 Local Government, may commit any person for trial to the Court of
 Session or High Court for any offence triable by such Court.

But, save as herein otherwise provided, no person triable by the
 Court of Session shall be committed for trial to the High Court.

It is not illegal for a Magistrate to commit an accused to the Sessions without
 examining him or his witnesses. The Magistrate, when he has prepared the charge,
 is bound to read it to the accused, and to ask him if he wishes to have any witnesses
 summoned to give evidence on his behalf at the Sessions. The Magistrate cannot
 refuse to permit an accused to attend at the Sessions by mukhtar.—*Reg. v. Hurnath*
Roy, 2 W. R. 50.

WHERE the accused was, by a Magistrate of the 1st class, committed for trial by
 the Sessions Court on a charge of having given false evidence in a judicial proceed-
 ing before the Sessions Judge, there being no Assistant or Joint Sessions Judge :
Held that the commitment could not be quashed, there being no error in law ; and
 the case must, therefore, be transferred for trial to another Court of Session. In
 such a case as the above, the better course would be for the Magistrate to try the
 case himself, and if he is incompetent to pass a sufficient sentence, for the Sessions
 Judge to refer the case to the High Court for enhancement of sentence.—*Reg. v.*
Gajikom Rann, 1 L. R., 1 Bom. 311.

THE accused was charged with throwing B and C down a well. She was charged
 with the murder of B under s. 302 of the Penal Code, and on that charge she was
 tried and acquitted. Thereupon the Joint Magistrate, without holding any further
 preliminary inquiry, committed her on a charge under s. 307 of attempting to murder
 C. The only eye witness of the offence, according to the Sessions Judge, was a child ;
 and as she did not understand the nature of an oath or solemn affirmation, her evi-
 dence was taken on simple affirmation. The jury found the prisoner guilty, and she
 was sentenced to ten years' transportation ; *Held* that the omission to administer
 either an oath or solemn affirmation, although knowingly made, did not render the
 child's evidence inadmissible : *Held* also that the omission by the Joint Magistrate
 to hold a preliminary inquiry on the charge being an irregularity which prejudiced
 the prisoner in her defence, the proceedings should be quashed, and a new trial
 held.—*Queen v. Mussamut Itwarya*, 14 B. L. R. 54.

Act X., 1872, **207.** The following procedure shall be adopted in inquiries before
 s. 189. Magistrates where the case is triable exclusively
Act IV., 1877, Procedure in inquiries by a Court of Session or High Court, or, in the
 s. 81. preparatory to commitment. opinion of the Magistrate, ought to be tried by such Court.

Act X., 1872, **208.** The Magistrate shall, when the accused appears or is brought
 s. 190. before him, proceed to hear the complainant
Act IV., 1877, Taking of evidence pro- (if any), and take, in manner hereinafter pro-
 s. 82. duced. vided, all such evidence as may be produced in support of the prosecu-
 tion or in behalf of the accused, or as may be called for by the Magistrate.

Act X., 1872, If the complainant or officer conducting the prosecution, or the
 ss. 357, para. Process for production of accused, applies to the Magistrate to issue
 1, 362. further evidence. process to compel the attendance of any witness
Act IV., 1877, or the production of any document or other thing, the Magistrate shall
 s. 83, para. issue such process, unless, for reasons to be recorded, he deems it unne-
 2. cessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

THE right of an accused person to cross-examine witnesses is limited to the right to cross-examine the witnesses for the prosecution or the Crown called against him. If he wishes to avail himself of the evidence which has been given by a witness called for another of the parties accused, he must call him as his own witness.—*Reg. v. Surroop Chunder Paul*, 12 W. R. 75.

A PRISONER arrested under a warrant should be brought promptly before a Magistrate, who has then no authority to further detain him in custody or to remand him to prison without some reason made manifest to him, either in the shape of sworn testimony given before him, or of some other form which can be put upon the record, and which is sufficient to justify him in sending the prisoner to prison.—*Abdool Kader Khan v. The Magistrate of Purneah*, 20 W. R. 23; 11 B. L. R. App. 8.

WHERE the Magistrate trying an offence rejected an application by the accused person that a certain person might be examined on his behalf either in Court or by commission, without recording his reasons for refusing to summon such person as required by s. 208, it was held that the conviction of the accused person must be set aside, and the case be re-opened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law.—In the matter of the petition of *Sat Narain Singh* and another, I. L. R., 3 All. 392.

THE accused should be allowed to cross examine the witnesses for the prosecution, and to make his defence. It is not sufficient that he should be present as one of a number who depose to certain facts, the result of such deposing being that the prisoner is committed for trial. If he happened to be present at first as a witness, it is essential that he should know at what time he ceased to be a witness and became a defendant, so that he might know when his rights as an accused person commenced, and might avail himself of them.—*Reg. v. Kalichurn Lahoree*, 5 R. C. C. 41; 9 W. R. 54.

WHERE a Magistrate took the depositions in a case by reading over to the witnesses depositions taken in another case, at the hearing of which the prisoner was not present, and by procuring them to affirm to the truth of what was read over to them, it was held that the depositions were illegally taken, and could not sustain a charge.—*Reg. v. Rajkrishna Mitter*, 1 B. L. R. 37; and *Reg. v. Bishonath Pal*, 3 B. L. R. 20. But where the evidence of witnesses given on a previous occasion was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court refused to interfere, as the prisoners were not prejudiced by the irregularity.—*Purnessur Singh v. Soroop Audhukaree*, 13 W. R. 40. See also *Kopil Nath Sahi v. Konceram*, 14 W. R. 3.

209. When the evidence referred to in section 208, paragraphs 1 Act X., 1872,

When accused person to and 2, has been taken, and he has examined s. 195.
be discharged. the accused for the purpose of enabling him to Act XI., 1874,
explain any circumstances appearing in the evidence against him, such s. 14.
Magistrate shall, if he finds that there are not sufficient grounds for Act IV., 1877,
committing the accused person for trial, discharge him, unless it appears s. 87, omit-
to the Magistrate that such person should be tried before himself or ting the Ex-
some other Magistrate, in which case he shall proceed accordingly. planations.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

THE Magistrate is bound to record any statement which an accused person desires to make.—*In re Abdool Guffoor*, 10 Cal. Law Rep. 51.

A MAGISTRATE may, under this section, discharge an accused person sent to him under s. 476, if, in his opinion, the evidence against him does not warrant his being committed for trial.—Reg. v. Pandurang Myral, 5 Bom. H. C. Rep. 41.

An admission of crime, when fairly made after due warning, is not inadmissible, simply because, at the time it was made, no formal accusation had been made against the party making it.—Queen v. Ram Churn Chamar, Heramun Chamar, and Ramdihal Chamar, 4 W. R. 10.

WHERE the accused person, who has been duly summoned or arrested under a warrant, is present to meet any charge, and no evidence is forthcoming against him owing to the absence of the prosecutor and his witnesses, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under s. 208, the Magistrate is bound to discharge such accused person.—Tuki Mahomed Mundul v. Kisto Nath Rai and others, 15 W. R. 53 ; 7 B. L. R. 7.

A "REVIVAL of a prosecution," as mentioned in Act IV. of 1877, s. 87, expl. 2 (s. 209 of this Code), is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate ; and if any of them were examined at the time of the original prosecution, they must be examined *de novo*.—Emprass v. Chandra Nath Dutta, 1 L. R., 5 Cal. 121.

Act X., 1872,
s. 195, Expl.

210. When, upon such evidence being taken, and such examination

III., ss. 196, 198, para. 1, framed. When charge is to be (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Act IV., 1877,
ss. 88, 89,
omitting
paras. 3 & 4.

Act X., 1872,
s. 199, and copy furnished, to ac-
cused.

As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

Act IV., 1877,
s. 90.

WHERE there is a riot and fight between two factions, the members of each party should be committed for trial separately, and not all together.—Reg. v. Durzoolla and others, 9 W. R. 33.

THE MAGISTRATE, in his grounds of committal, should specifically note, with exactness and precision, the proof against each particular prisoner, and the manner in which it is supported.—Reg. v. Kodai Kahar, 5 W. R. 6.

THERE should be a separate trial on each charge of giving false evidence, though the statements forming the basis of the charge refer to the same subject-matter. It is illegal to join two persons in one indictment of giving false evidence.—10 W. R. 2, C. L. ; Mad. H. C., March 15, 1867.

THERE had been a riot and fight between two parties, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of A. *Held* that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party A and of party B for trial together upon joint charges, as if they had had one common object.—Reg. v. Sheik Bazu and others, 8 W. R. 47.

Act X., 1872,
s. 200, paras.
1 and 3.
Act IV., 1877,
s. 91.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time ; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to

Further list.

preclude the accused from giving, at any time before his trial, to the Clerk of the Crown, a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses. **212.** The Magistrate may, in his discretion, Act X., 1872, s. 200, para. 2. summon and examine any witness named in any list given in to him under section 211. Act IV., 1877, s. 91.

213. When the accused, on being required to give in a list under Act X., 1872, s. 198, para. 1, 200, para. 2. section 211, has declined to do so, or when he Act IV., 1877, s. 91. has given in such list, and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment. Act IV., 1877, s. 89, para. 1, 91.

THE MAGISTRATE, in his grounds of committal, should specifically note, with exactness and precision, the proof against each particular prisoner, and the manner in which it is supported.—*Reg. v. Kodai Kahar*, 5 W. R. 6.

THE duty of a committing officer is to ascertain whether, by the evidence for the prosecution, a *prima facie* case has been made out against the accused. It is erroneous for such officer to suppose that he is bound to satisfy himself fully of the guilt of the accused before making a commitment. All that such officer need satisfy himself about is, whether the evidence is such as to justify a reasonable expectation of conviction.—*Reg. v. Moha Singh*, 3 All. 27.

214. If any person (not being an European British subject) is ac- Act X., 1872, s. 197, omitting the Explanation. cused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

215. A commitment once made under section 213 or section 214 Act X., 1872, s. 197, Explanation & last para. by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

THE High Court is competent, in the exercise of its powers of revision, to quash a commitment made by a Court of Session.—*Empress v. Lachman Singh*, I. L. R., 2 All. 398.

WHERE a Sessions Judge considers a commitment to be illegally made, he should, in accordance with Circular Order No. 7 of the Calcutta High Court, dated the 20th June 1864, refer the case to the High Court; but where the Sessions Judge wished to cancel a commitment apparently on the ground of the evidence being insufficient, the High Court held that the insufficiency of legal evidence was no ground for reference.—*In re Gokul Bandari*, 1 W. R. 8.

WHERE the accused was, by a Magistrate of the first class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or Joint Sessions Judge, it was held that the commitment could not be quashed, there being no error in law, and the case must therefore be transferred for trial to another

Court of Session. In such a case as the above the better course would be for the Magistrate to try the case himself; and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence.—*Reg. v. Gaji Kom Ranu*, I. L. R., 1 Bom. 311.

IF ANY Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority. If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.—S. 532, *infra*.

Act X., 1872, s. 358. 216. When the accused has given in any list of witnesses under section 211, and has been committed for trial, Act IV., 1877, s. 92, Summons to witnesses for defence when accused is committed, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Act X., 1872, s. 359. Provided also that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Refusal to summon unnecessary witness unless deposit made. Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may, before summoning him, require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

A MAGISTRATE is not at liberty to refuse to summon a witness tendered by an accused person, except on the grounds specified in s. 216; and if he does refuse, he is bound to proceed under that section. The fact that the accused declines to examine a witness is no reason for refusing to summon him to meet fresh evidence given subsequent to the defence being closed.—*In re Deela Malton v. Sheo Doyal Koori*, I. L. R., 6 Cal. 714; 8 Cal. Law Rep. 70.

A PRISONER is entitled, as a matter of right, to have any witnesses named in the list which he delivers to the Magistrate, summoned and examined. In this case, a list of witnesses having been put in, two of them did not appear, one not being served with a summons, and no summons being issued against the other. Under the circumstances the prisoner's pleader applied for an adjournment to enable him to call these two witnesses, but the application was refused. On appeal it was held by the High Court that the prisoner was entitled, as a matter of right, to have these witnesses summoned and examined. An order was accordingly passed, directing the evidence of these witnesses to be taken.—*Reg. v. Prossono Coomer Moitro*, 23 W. R. 56.

ON THE 30th March 1881, an accused person, on his trial before a Magistrate, asked that a certain witness might be summoned on his behalf. The Magistrate ordered a summons to be issued for the attendance of such witness on the 18th April, to which day the further hearing of the case was adjourned. There was

some delay in the service of the summons, and such witness did not attend on that day. The Magistrate refused an application by the accused for the issue of a second summons to such witness with reference to this section on the ground that such application was not made in "good faith." *Held* that the provisions of this section were clearly inapplicable to the case as it stood before the Magistrate on the 18th April, and he was bound to make a further attempt—the first attempt seemed to have been nominal merely to secure the attendance of the absent witness.—*Empress v. Ruku-ud-din*, 1 L. R., 4 Mad. 53.

A PRISONER who was about to be committed to the Sessions Court presented to the Magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the Magistrate why he desired to summon the witnesses, the prisoner declined to state his reason. *Held* that the Magistrate was at liberty to decline to summon the persons named in the list on the prisoner declining to satisfy him that they were material witnesses; but the Magistrate ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited. The High Court called for the record for the purpose of seeing whether any of the persons named in the list were likely to be able to give material evidence.—*Subharaya Mudali*, Appellant, 4 Mad. H. C. R. 81. In the case of *Reg. v. Ishan Dutt*, 15 W. R. 34, it was, however, held that the Magistrate is bound to take steps to procure the attendance of all the witnesses named by the accused in his list. Since then the case of *Reg. v. Rajcoomar Mookerjee*, 16 W. R. 14, has been decided, in which the ruling of the High Court at Madras has been upheld, with the addition that the Magistrate ought to record his reasons for refusing to summon witnesses. S. 216 now clearly fixes the law on the subject.

ON THE 9th of October 1877 certain persons were charged before the Magistrate with rioting, and, being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance, but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and convicted the accused on the 12th October 1877. *Held per Jackson, J.*, that this being a warrant-case it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might, at his discretion, have adjourned the case. *Held further per Jackson, J.*, that the meaning of s. 216 is, that if among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment, and enquire whether such witness is material; but that the section is not intended to enable the Magistrate to enquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused; and, further, that in the present case there was not any purpose of vexation or delay, and by the refusal to grant further time the accused had been probably prejudiced in their defence.—*Empress v. Raj Coomar Singh and another*, 1 L. R., 3 Cal. 573; 2 Cal. Law Rep. 62.

217. Complainants and witnesses for the prosecution and defence, Act X., 1872, s. 360.

Bond of complainants and witnesses, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be. Act IV., 1877, s. 93.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

It will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session, that such parties may not be brought from their homes to the Sudder Station before they are actually required, and they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.—Cal. H. C. Cir. 4, dated May 6, 1868; Wilkins, p. 102.

- Act X., 1872,** **218.** When the accused is committed for trial, the Magistrate shall
 s. 202, para. 1. Commitment when to be notified, issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;
- Act X., 1872,** and shall send the charge, the record of the inquiry, and any weapon
 s. 198, paras. 2, 3, and 4. Charge, &c., to be forwarded to High Court or Court of Session. or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.
- Act X., 1872,** When the commitment is made to the High Court, and any part
 s. 198, para. 4. English translation to be forwarded to High Court. of the record is not in English, an English translation of such part shall be forwarded with the record.

- Act X., 1872,** **219.** The Magistrate may summon and examine supplementary
 s. 357, para. 2. Power to summon supplementary witnesses. witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.
- Act IV., 1877,** Such examination shall, if possible, be taken in the presence of the
 s. 91, para. 4. accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

- Act X., 1875,** **220.** Until and during the trial, the Magistrate shall, subject to the
 s. 26. Custody of accused pending trial. provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.
- Act IV., 1877,** ing trial.
 s. 89, para. 3.
- See s. 541, *infra*.
- See s. 554, *infra*.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

- Act X., 1872,** **221.** Every charge under this Code shall
 s. 439, paras. 1 to 6. Charge to state offence. state the offence with which the accused is charged.
- Act IV., 1877,** If the law which creates the offence gives it any specific name, the
 s. 94. Specific name of offence sufficient description. offence may be described in the charge by that name only.
- If the law which creates the offence does not give it any specific name, so much of the definition of the offence has no specific name. must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

In the Presidency-towns the charge shall be written in English ; elsewhere it shall be written either in English or in the language of the Court.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Act X., 1872,
s. 439, last
para.
Act X., 1875,
s. 118.
Act IV., 1877,
s. 94, last
para.

Illustrations.

(a.) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code ; that it did not fall within any of the general exceptions of the same Code ; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

Act X., 1872,
s. 439, Illustrations.
Act IV., 1877,
s. 94, Illustrations.

(b.) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(c.) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code ; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d.) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

PERSONS against whom offences are committed are to be described in the charge by their names, and not by their accidental positions as prosecutors or witnesses in the particular trial.—Mad. H. C. Pro., Feb. 28, 1865 ; Weir, p. 4.

A PUNISHMENT of whipping in addition to imprisonment on a second conviction for the offence of theft is illegal, unless the previous conviction has been set out in the charge.—Mad. H. C. Pro., Feb. 3, 1874 ; see also Mad. H. C. Pro., Oct. 21, 1878 ; Weir, p. 4.

A PREVIOUS conviction need be charged only when it renders the accused liable to a greater or different punishment than that which he might incur for the simple offence.—Mad. H. C. Pro., Nov. 19, 1875 ; see also Mad. H. C. Pro., Sep. 23, 1878 ; Weir, p. 4.

WHERE perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken in the case in which it is tried. If the whole proof consists of two conflicting statements, an alternative charge and finding are the regular course.—Mad. H. C. Pro., Nov. 30, 1874.

IF it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after.—Reg. v. Rajcoomar Bose, 19 W. R. 41 ; 10 B. L. R., App., 36.

WHERE a prisoner has made two contradictory statements, and there is no counterbalancing evidence to show which of them is false, he may be charged in the alternative with having given false evidence in one or other of the two statements.—Palany Chetty, Appellant, 4 Mad. H. C. Rep. 51.

WHERE the previous conviction did not form part of the charge, the enhanced sentence was set aside, and the Sessions Judge directed to re-open the trial with the same set of jurors on the charge, giving the accused an opportunity of making a fresh defence to it. The High Court remarked that the question of proof of previous conviction is one of fact which ought to have been gone into, and been determined by a jury.—Reg. v. Esan Chunder Dey, 21 W. R. 40.

A CHARGE of having committed an offence after a previous conviction therefor should contain an allegation that the offence has been committed after a previous conviction. A statement in a count that at the time when the prisoner committed the offence (no offence being mentioned specially in the count) he had been previously convicted of offences punishable under ch. xvii. of the Penal Code is not a sufficient compliance with the provisions of s. 439.—Reg. v. Sheikh Jakir, 22 W. R. 39.

IN charging a previous conviction, the charge should run thus : "That you , before the committing of the said offence, were convicted on the day of , in Calendar No. of on the file of the , of an offence punishable under ch. xvii. of the Penal Code with imprisonment for a term of three years, to wit, the offence of , which conviction is still in force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Penal Code, and within the cognizance of ."—Mad. H. C. Pro , April 17, 1868 ; Weir, p. 4.

Act X., 1872 s. 440. **222.** The charge shall contain such particulars as to the time and
Act IV., 1877, s. 95. Particulars as to time, place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Act X., 1872, s. 441. **223.** When the nature of the case is such that the particulars men-
Act IV., 1877, s. 96. tioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(a.) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b.) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c.) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d.) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e.) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f.) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law in-
fringed.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable. Act XVIII., 1862, s. 28.

Words in charge taken in sense of law under which offence is punishable.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars shall be regarded, at any stage of the case, as material, unless the accused was misled by such error or omission. Act X., 1872, s. 443.
Act X., 1875, s. 24.
Act IV., 1877, s. 98.

Effect of errors.

Illustrations.

(a.) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d.) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e.) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

THE accused was charged under s. 217 of the Penal Code; but the charge did not distinctly state what the direction of the law was which he disobeyed, and how he disobeyed it. *Held* that when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial. The High Court set aside the conviction and sentence on the ground that the charge did not give the accused the information which the law intended him to have of the particular offence which he was called upon to answer.—*Imperatrix v. Baban Khan Valad Mhaskoji*, 1. L. R., 2 Bom. 142.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges. Act X., 1872, s. 446.
Act X., 1875, ss. 7, 8.

Procedure on commitment without charge or with imperfect charge.

with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

WHERE an accused person is committed to take his trial on specific charges before the Sessions Court, the Judge has no power to expunge a charge before calling upon the accused to plead to it.—*Empress v. Sheik Paresnullah*, 7 Cal. Law Rep. 143.

Act X., 1872, **227.** Any Court may alter any charge at any time before judgment
 ss. 444, 445. is pronounced, or, in the case of trials before the
Act X., 1875, Court may alter charge. Court of Session or High Court, before the
 ss. 9, 10. verdict of the jury is returned or the opinions of the assessors are ex-
Act IV., 1877, pressed.
 ss. 99, 100.

Every such alteration shall be read and explained to the accused.

On a trial by jury the Sessions Judge has no power to alter the charge after delivery of the verdict.—*Reg. v. Sheik Ali Valad Fakir Muhammad*, 5 Bom. H. C. Rep. 9.

CHARGES which require alteration should, as a rule, be amended by the Court of Session before the trial commences. The charge as amended must still run in the name of the committing officer.—*Mad. H. C. Pro.*, Aug. 30 and Sep. 8, 1862; *Weir*, p. 4.

Act X., 1872, **228.** If the charge framed or alteration made under section 226 or
 s. 447. section 227 is such that proceeding immediately
Act X., 1875, When trial may proceed ly with the trial is not likely, in the opinion of
 s. 11. immediately after altera- the Court, to prejudice the accused in his
Act IV., 1877, tion. defence, or the prosecutor in the conduct of the case, the Court may, in
 s. 101. its discretion, after such charge or alteration has been framed or made,
 proceed with the trial as if the new or altered charge had been the
 original charge.

WHILE A and B were being jointly tried before a Court of Session, the first for murder, and the second for abetment of murder, a confession made by A, that he himself had committed the murder at the instigation of B, was put in as evidence against A. Subsequently the charge against A was altered to one of abetment of murder, and the Sessions Judge, under the authority of s. 30 of the Evidence Act, used the confession against both, and convicted them. The High Court held that the original and amended charges were so nearly related that the trial might, without any unfairness, be deemed to have been a trial on the amended charge from the commencement; and that no objection having been taken by B, who was represented by a vakil, to the admissibility of A's confession against him when the charge against A was altered, the Sessions Judge was justified in using the confession against B also.—*Reg. v. Govind Babli Raul and Babaji Govind Kubal*, 11 Bom. H. C. Rep. 278.

R HAVING been committed by a Magistrate for trial by a Sessions Court on a charge, under s. 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty, on his trial, to the charge on which he was committed.

Upon the application of the Public Prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge, under ss. 109 and 201 of the Penal Code, of abetting C, a female co-prisoner, charged with having assisted in burying the body of the murdered person, required R to plead to the charge, and, having tendered a pardon to and examined C as a witness, convicted and sentenced R to two years' rigorous imprisonment.

Held that as there was no evidence before the Magistrate to support the charge against R framed by the Sessions Judge, the action of the Judge was *ultra vires*, and the conviction on the added charge illegal.

Held also that inasmuch as the Sessions Judge considered R more culpable than C, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an inquiry as to whether there was ground for a more serious charge against R.

Semble.—The object of restricting a Sessions Court from taking cognizance of any offence (except as provided in ss. 236, 477, and 478 of the Criminal Procedure Code), unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary inquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him, and enables him to make his defence.—*Mutirakal Kovilagatha Rama Varma Raja* (Prisoner), *Appellant*, v. *Reg.*, 1. L. R., 3 *Mad.* 351.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial, or adjourn the trial for such period as may be necessary.

Act X., 1872,
s. 448.
Act X., 1875,
s. 12.
Act IV., 1877,
s. 102.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Act X., 1872,
s. 450.
Act X., 1875,
s. 16.
Act IV., 1877,
s. 104.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon and examine, with reference to such alteration, any witness who may have been examined.

Act X., 1872,
s. 449.
Act X., 1875,
s. 15, omitting 'during the trial.'
Act IV., 1877,
s. 103.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII., is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Act X., 1872,
s. 451.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Act XI., 1874,
s. 40.

Joinder of Charges.

233. For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

Act X., 1872,
s. 452.
Act X., 1875,
s. 17.
Act IV., 1877,
s. 105.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

THE accused persons were tried on 27 charges, comprising the offences of theft, the abetment of theft, and receiving stolen property in 1872-73, 1873-74, and 1874-75; the giving and receiving of gratifications to and by public servants in 1874-75; and the fabrication and abetment of fabrication of false evidence in 1876. One of the accused was convicted on two heads of charge, and the rest acquitted. The convict

appealed against his conviction and sentence ; and the Government appealed against his acquittal on the other heads, as well as against the acquittal of the rest : *Held* that the trial was irregular under this section, and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that those offences did not prejudice the accused persons who had been fully and fairly tried for those offences.—*Reg. v. Hanmant* and appeal by the Government against the acquittal of Hanmant, and others, I. L. R., 1 Bom. 610.

- Act X., 1872, s. 453. **234.** When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.
- Act X., 1875, s. 18. Three offences of same kind within year may be charged together.
- 1 O'Kin. 480. Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.
- Act IV., 1877, s. 106 ; cf. 24 & 25 Vic., c. 96, s. 5.

THIS section simply places a statutory limit on the number of charges which may legally form part of a single trial. There is nothing in the section, however, to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year.—*Empress on the prosecution of Ram Manikya Chakravarti and others v. Dhuananjay Baraj*, I. L. R., 3 Cal. 540.

WHERE a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict.—In the matter of Daulatia and another, I. L. R., 3 All. 305.

M was accused of cheating G on two different occasions, and also of cheating K on a third occasion. The three offences were committed within one year of each other ; and M was charged and tried at the same time for the three offences. *Held* that such joinder of charges was irregular, inasmuch as the combination of three offences of the same kind, for the purpose of one trial, can only be, where such offences have been committed in respect of one and the same person, and not against different prosecutors, within the period of one year, as provided in the Criminal Procedure Code.—*Empress v. Murari*, I. L. R., 4 All. 147.

- Act X., 1872, s. 454, omitting Illustrations (c), (h), (i), and (k). **235. I.**—If, in one series of acts so connected together as to form one offence, the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.
- Act X., 1875, s. 19. **II.**—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.
- Act IV., 1877, s. 107. Penal Code, s. 33.

III.—If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations

to paragraph I.—

(a.) A rescues B, a person in lawful custody, and, in so doing, causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code.

(b.) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(c.) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(d.) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries, punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e.) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(f.) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(g.) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325, and 152 of the Indian Penal Code.

(h.) A threatens B, C, and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.
to paragraph II.—

(i.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(j.) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(k.) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(l.) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.
to paragraph III.—

(m.) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392, and 394 of the Indian Penal Code.

THE collective punishment awarded under ss. 147, 148, and 324, Penal Code, must not exceed that which may be awarded for the graver offence.—*In re Jubdur Kazi and Golab Khan*, I. L. R., 6 Cal. 718 ; 8 Cal. Law Rep. 390.

WHERE a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass and at the same time committed mischief, it was held that such person could not receive a punishment more severe than might have been awarded for either of such offences.—*Empress v. Budh Singh*, I. L. R., 2 All. 101.

A PRISONER, tried, convicted, and punished, under s. 369 of the Penal Code, of abducting a child with intent dishonestly to take movable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction ; and the second punishment for theft is illegal.—*Naujan, Appellant*, 7 Mad. H. C. Rep. 375

IN a case of conviction of house-breaking by night in order to commit theft under s. 457, and theft under s. 380 of the Penal Code, there may either be one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.—*Reg. v. Tukaya bin Tamana*, I. L. R., 1 Bom. 214.

THE prisoners were convicted of two offences—(1) wrongful confinement in secret under s. 346, Penal Code ; and (2) attempt to kidnap out of British India under s. 511, Penal Code. The High Court quashed the conviction under s. 346, holding that the prisoners could not also be convicted of attempting to kidnap out of British India, as the latter offence necessarily implied confinement or restraint of some kind.—*Reg. v. Mungroo and another*, 8 All. 293.

WHERE a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him, for each offence, the punishment which he is by his ordinary jurisdiction competent to inflict.—In the matter of *Danlatia* and another, I. L. R., 3 All. 305.

WHERE the petitioner was convicted of having voluntarily assisted in concealing stolen railway-pins in a certain person's house and field, with a view to having such innocent person punished as an offender : *Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193, Penal Code, and of voluntarily assisting in concealing stolen property under s. 144.—*Empress v. Rameswar Ray*, I. L. R., 1 All. 379.

Act X., 1872, s. 455. **236.** If a single act, or series of acts, is of such a nature that
 Act X., 1875, s. 20. Where it is doubtful what offence has been committed. is doubtful which of several offences the facts
 Act IV., 1877, s. 108. may be charged with having committed all or any of such offences, and
 N.W.P., 1875, p. 137. any number of such charges may be tried at once ; or he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

IF, in a case of perjury, the whole proof consists of two conflicting statements, an alternative charge and finding are the regular course.—*Mad. H. C. Pro.*, Nov. 30, 1874 ; *Weir*, p. 5.

WHERE a prisoner has made two contradictory statements, and there is no counterbalancing evidence to show which of them is false, he may be charged in the alternative with having given false evidence in one or other of the two statements.—*Palany Chetty, Appellant*, 4 Mad. II. C. Rep. 51.

In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.—*Penal Code, s. 72.*

It is not to cases where the facts are doubtful, but to cases where the application of the law to the facts is doubtful, that s. 236 is applicable; and judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused is guilty of any one of the several offences charged, but where it is doubtful of which of these offences he is guilty.—*Reg. v. Jamurha*, 7 N. W. P. 137.

It was held by a majority of a Full Bench (*Jackson, J.*, dissenting) that a charge framed on the model given in the schedule of the Code of Criminal Procedure, charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193, Penal Code, is a good charge, and that (*Phear and Jackson, J.J.*, dissenting) the Court or Jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or Jury should find that the allegations made in the charge are proved.—*Reg. v. Mahomed Humayoon Shah*, 21 W. R. 72; 13 B. L. R. 324 (F. B.).

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Act X., 1872,
s. 456.
Act X., 1875,
s. 21.
Act IV., 1877,
s. 109.

When a person is charged with one offence, he can be convicted of another.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

WHEN a person was charged by an Assistant Sessions Judge with (1) attempting to commit criminal breach of trust as a public servant; (2) framing, as a public servant, an incorrect document to cause injury; (3) framing, as such public servant, an incorrect document to save a person from punishment; and was acquitted on the ground that he was not a public servant, though the Judge found that he had framed the document with a fraudulent intention: *Held* that the Assistant Sessions Judge ought to have convicted the accused of attempting to cheat and abetting that offence, though he was not directly charged with those crimes, as the legal character of the acts done by him might well be considered ambiguous, and the evidence given would apply to the one offence as well as to the other, and in being called on to rebut the charge of attempt to commit criminal breach of trust, the accused had to meet the same facts as if he had been charged with attempt to cheat; and it was only the legal aspect of them that would be varied in the two cases. The High Court, therefore, allowed the objection urged at the hearing, though not distinctly raised by the Government in their appeal, and ordered a retrial of the accused.—*Reg. v. Ramajirav Jivbarav*, 12 Bom. H. C. Rep. 1.

Act X, 1872, s. 457. **238.** When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

Act X., 1875, s. 22.
Act IV., 1877, s. 110.
11 Bom. 241, per West, J.

When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence, referred to in section 198 or section 199, when no complaint has been made, as required by that section.

Illustrations.

(a.) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

23 South. Cr. R. 61. (b.) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

A PRISONER, charged with dacoity and riot, and acquitted, cannot be convicted of house-trespass, if the latter charge was not read out or explained to him, and he was not called on to plead to it.—*Reg. v. Salamut Ali and others*, 23 W. R. 58.

THE prisoner was charged under the Indian Code, ss. 304, 323, and 325, and the jury brought in a verdict of guilty under s. 325. *Held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstance which would confine the punishment within the limits specified in s. 335.—*Reg. v. Lukhinarain Agoori*, 23 W. R. 61.

THE accused were charged under s. 149, coupled with s. 325 of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325: *Held* that such verdict was, under this section, legally sustainable, although that offence did not form the subject of a separate charge. This section enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence.—*The Government of Bengal v. Mahaddi and another*, 1 L. R., 5 Cal. 871; 6 Cal. Law Rep. 349.

WHERE dacoity was committed at Velanpur, a village in the territory of His Highness the Gaekwar, and a part of the stolen property found where it had been concealed by the accused in British territory, it was held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpur, although, had Velanpur been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, have coalesced with the first and principal one, so as to give jurisdiction under s. 181 of this Code in each district into which the property was conveyed. But on a conviction of retaining stolen property the sentence awarded could, it was held, be sustained, the retaining having taken place in British territory. In this case the conviction was altered from dacoity to receiving stolen property known to have been obtained by dacoity, the latter offence being included in the more comprehensive one of dacoity.—*Reg. v. Lakhya Gobind and another*, 1 L. R., 1 Bom. 50.

S. 238 applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence. The grave charge in such a case gives to the accused notice of all the circumstances going to constitute the minor one of which he may be convicted. But when that is not the case, where the circumstances embodied in the major charge do not necessarily, and according to the definition of the offence imputed by that charge, constitute the minor offence also, the principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter. The section is not intended to apply to a collateral offence. It is not open to a Court to find a man guilty of the abetment of an offence on a charge of the offence itself. When a man, charged with murder, was convicted of the abetment of it, without the charge being altered, the High Court reversed the conviction, and ordered him to be re-tried on the latter charge.—*Reg. v. Chant Nur*, 11 Bom. H. C. Rep. 240.

239. When more persons than one are accused of the same offence, Act X., 1872,

What persons may be or of different offences committed in the same s. 458.
 charged jointly. transaction, or when one person is accused of Act X., 1875,
 committing any offence, and another of abetment of, or attempt to com- s. 23.
 mit, such offence, they may be charged and tried together or separately, Act IV., 1877,
 as the Court thinks fit; and the provisions contained in the former part s. 111.
 of this chapter shall apply to all such charges.

Illustrations.

(a.) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(b.) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(c.) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

WHERE there is a riot and fight between two factions, the members of each party should be committed for trial separately, and not all together.—*Reg. v. Dur zoolla and others*, 9 W. R. 33.

WHERE two prisoners are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other.—*In re David*, 5 Cal. Law Rep. 574.

Two persons purchased different articles from a thief or receiver of stolen property. It was held that such two persons could not be tried jointly, as they were not engaged in the same transaction, nor was there any complicity between them.—1 Hill's Legal Remembrancer 216.

IN A case of riot which resulted in the death of one person and serious injury to others from gun-shot wounds, the persons implicated were tried together before the Sessions Judge, who adopted the following procedure. He examined the prisoners one by one, requiring the others to withdraw from the Court until their respective turn for examination came round, and, principally upon statements thus obtained in their absence, he convicted all the prisoners. The High Court held that the Sessions Judge had, in adopting such procedure, acted in a manner directly opposed to the rule that no one should be condemned upon statements made in his absence, and therefore that all statements thus made by any of the prisoners in the absence of another must be put out of consideration so far as they affect the latter.—*Chunder Sircar and others v. The Empress*, 8 Cal. Law Rep. 352; 1 L. R., 7 Cal. 65.

MEMBERS of two opposing parties in a riot were, under two distinct committals, sent up for trial before the Sessions Judge and a jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter-case before the same jury. The Court then took the evidence of the witnesses for the defence in the first, and in the counter-case in the order named, and, after hearing the address of the various pleaders for the defence and the reply of the Government pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused: *Held* that the procedure resorted to by the Judge was a practical violation of the salutary rule which re-necessitated the keeping of trials in such cases distinctly separate, and that its adoption having materially prejudiced the interests of the accused, the convictions should be set aside.—*Hossein Buksh and others v. The Empress*, I. L. R., 6 Cal. 96; 6 Cal. Law Rep. 51.

- Act X., 1872, s. 459, omitting the first ten words "In trials before a Court of Session or H. Court," and inserting "the complainant." **240.** When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.
- Act X., 1875, s. 102.
Act IV., 1877, s. 112.
Last 2 lines new.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

- Act X., 1872, s. 203, para. 1. **241.** The following procedure shall be observed by Magistrates in the trial of summons-cases.
- Act IV., 1877, s. 114. **SUMMONS-CASE** means a case relating to an offence not punishable with death, or imprisonment for a term exceeding six months.—S. 4, cl. t, *supra*.
- Act X., 1872, ss. 203, para. 2, first clause, 206, para. 1. **242.** When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.
- Act IV., 1877, s. 115. **Substance of accusation** to be stated.

It is essential that an accused person should be clearly informed that he is about to be put on his trial, and he should also be informed of the nature of the offence with which he is charged.—*In re Achurjee Lall and another*, 3 Cal. Law Rep. 87.

- Act IV., 1877, s. 120. **243.** If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.
- Conviction on admission** of truth of accusation.

WHEN a written defence is tendered in a case tried under this chapter, the Magistrate is not bound to take down the defence of the accused by personally examining him.—*Dila Mundul and others v. Kally Shaha and others*, 16 W. R. 63.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused, and take all such evidence as he produces in his defence.

Act X., 1872,
s. 207.
Act IV., 1877,
s. 121.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

Act X., 1872,
s. 361.
Act IV., 1877,
s. 142.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

THE High Court quashed a conviction as absolutely illegal in a case in which the Magistrate refused to examine a witness produced by the accused.—*Reg. v. Mohima Chandra Chuckerbutty*, 4 B. L. R., App., 77.

A PURDAH-WOMAN summoned as a witness in a criminal case has a right to be exempted from personal attendance at Court, and to be examined on commission.—In the matter of the petition of Harasundari Chowdhurain, 1 L. R., 4 Cal. 20.

A MAGISTRATE is bound to examine all the witnesses whom an accused person may produce for his defence. *Held* by Bayley, J. (Markby, J., *dubitante*), that a Magistrate has a discretion to summon a witness when he is likely to give material evidence on behalf of the accused.—*Ameer Chand Nobatta*, Petitioner, 13 W. R. 63.

245. If the Magistrate, upon taking the evidence referred to in section 244, and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Act X., 1872,
s. 211, paras.
1 and 2.
Act IV., 1877,
s. 126.

If he finds the accused guilty, he shall pass sentence upon him according to law.

AN ORDER for compensation against a complainant may be made on an order of acquittal.—*Mona Sheikh v. Ishan Bardhan*, 1 L. R., 6 Cal. 581.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Act X., 1872,
s. 203, para.
2, cl. 2.
Act IV., 1877,
s. 117.
Nelson, 206.

A MAGISTRATE may convict the accused person, who has been summoned before him on the footing of a complaint, of any offence which is the subject of the definition in s. 4, cl. 2, of this Code, if he thinks that the facts established by the complainant and his evidence only amount to an offence within that section. Where the Magistrate treats the complaint throughout as substantially a summons-case, and follows the procedure which is applicable to such a case, he is at liberty, if he adjourns the case to a future day, to dismiss the complaint if the complainant does not appear on the day on which the hearing has been duly postponed.—*Mudhoo-soodun Sha v. Haridas Dass and others*, 22 W. R. 40.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate

Act X., 1872,
ss. 205, 208,
para. 3, 212.
Act IV., 1877,
s. 118.

trate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

AN ORDER for compensation against a complainant may be made on an order of acquittal under this section.—*Mona Sheikh v. Ishan Bardhan*, I. L. R., 6 Cal. 581.

THIS section not merely authorises, but requires, the Magistrate to dismiss the complaint upon default by the complainant, unless for some reason the Magistrate may think fit to adjourn the hearing.

IT is not competent to a Magistrate to dismiss a complaint for default of appearance of the complainant, unless the order of adjournment has been made in the presence and hearing of the parties.—*Mad. H. C. Pro.*, Feb. 24 and Aug. 17, 1875; *Weir*, p. 2.

IN A trial under this chapter it is not an irregularity to adjourn the trial for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial.—*In re Dinoo Roy and others*, 16 W. R. 21.

WHERE a case was adjourned for the hearing of witnesses for the defence, and on the adjourned date the complainant did not appear, the Magistrate should not have dismissed the case (unless the complainant's attendance was specially required), for the complainant had done all that was necessary for him to do to establish his case.—*Mad. H. C. Pro.*, Nov. 5, 1874; *Weir*, p. 184.

WHERE a complainant allows a complaint to be dismissed by default, it cannot be revived.—*In re Jadhoo Beharee*, 1 W. R. 25 (F. B. R., Cal. H. C.). But where such default is caused by the Magistrate's moving about in camp, to dismiss the case would be an irregularity such as holding of a Court in a place other than that mentioned in the summons, and under such circumstances the case should undoubtedly be revived.

A MAGISTRATE'S discretion to dismiss a complaint under this section owing to the non-attendance of the complainant does not extend to cases instituted after obtaining sanction to prosecute under s. 195 of this Code. So, where a Court had given its sanction to one of its bailiffs to prosecute an accused person for resisting the authority of such bailiff, and the bailiff, after instituting proceedings, did not appear to prosecute, it was held that the Magistrate was not justified in dismissing the complaint on account of the bailiff's non-attendance.—*Empress v. Ram Chunder Sidheswar*, Bom. H. C., Oct. 21, 1878. See too *Muse Ali Adam*, I. L. R., 2 Bom. 653.

A DEPUTY Magistrate adjourned a case to a certain day, on which he dismissed it for the non-attendance of the complainant; but on the following day cancelled that order, and revived the case on the ground that he had dismissed the case by mistake, and in ignorance of the complainant having petitioned for an adjournment on account of sickness. The Magistrate on appeal reversed the order of the Deputy Magistrate; but as the original order of the Deputy Magistrate was manifestly wrong, the High Court set aside the whole of the proceedings, and restored the case to the position in which it stood before the day to which it was in the first instance adjourned.—*Reg. v. Ramnarain Ghose*, 8 W. R. 5.

Act X., 1872,
s. 210.
Act IV., 1877,
s. 125.

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

IN cases of the contempt of the lawful authority of a public servant, the real complainant is the public servant whose authority has been resisted, and not the person injured by the resistance. Where therefore a prosecution has been instituted under s. 195 of this Code after obtaining the sanction of a Court or other authority, the case cannot be withdrawn without the sanction of such Court or authority.—*In re Muse Ali Adam*, I. L. R., 2 Bom. 653.

249. In any case instituted otherwise than upon complaint, a Pre-New.

Power to stop proceedings when no complainant. sidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

250. If, in any case instituted upon complaint, a Magistrate acquits Act X., 1872,

F frivolous or vexatious the accused under section 245 or section 247, s. 209, paras. 1 and 2. Act IV., 1877, s. 242. complaints, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

The sum so awarded shall be recoverable as if it were a fine:

Recovery of compensation. Provided that, if it cannot be realized, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

A MAGISTRATE cannot order compensation in a case which he permits to be withdrawn.—*Amannt Khan v. Khoda Buksh*, 1 Hill's Legal Remembrancer, 148.

AN ORDER awarding compensation under this section is not appealable, but is open to revision by the High Court.—*Mad. H. C. Pro.*, Nov. 22, 1879; *Weir*, p. 5.

COMPENSATION is awardable only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue.—*Reg. v. Ramji Daji*, 5 Bom. H. C. Rep., Cr. Ca., 12.

A MAGISTRATE having jurisdiction is authorized by law to direct the complainant to make amends to the accused, notwithstanding that the complainant is to take his trial for perjury.—*Reg. v. Roopun Rao*, 15 W. R. 9; 6 B. L. R. 296.

A PERSON against whom an award has been made under this section is not a person "convicted on a trial," and is therefore not entitled to appeal against the award of a Subordinate Magistrate to the Magistrate.—*Mad. H. C.*, April 29, 1867; 2 *Mad. Jur.* 322.

A COMPLAINT may be both frivolous and false. The award of compensation for making a frivolous complaint does not preclude the Magistrate who makes it from subsequently sanctioning prosecution for making a false complaint.—*Mad. H. C. Pro.*, Nov. 12, 1875; *Weir*, p. 5.

A MASTER cannot lodge a criminal complaint for an assault upon his servant. Where, therefore, a master made a complaint on behalf of his servant, and the complaint was dismissed, it was held that the Magistrate could not award compensation, as the master had no *locus standi*, and the Magistrate should have dismissed the complaint without any investigation.—*Corbyn v. Ameer Khan*, *Panj. Rec.*, No. 24 of 1869, Cr.

A MAGISTRATE dismissing a complaint as frivolous or vexatious can only award a sum not exceeding Rs. 50 to the accused by way of compensation, and cannot impose it by way of fine; nor can he directly sentence the complainant to imprisonment in default of payment. An attempt should first be made to recover the amount by distress and sale of the complainant's property.—*Reg. v. Gopal*, 2 N. W. P. 430.

It is only in summons-cases that compensation can be granted. Where a complaint is preferred to a Magistrate of an offence not coming under this chapter, and the Magistrate alters it so as to bring it within this chapter, he cannot, on dismissing the complaint as frivolous, award compensation to the accused, the offence originally complained of not being one for which compensation could be awarded.—Reg. v. Gurningapa, 7 Bom. H. C. Rep., Cr. Ca., 58.

A MAGISTRATE, in making an order for compensation, is bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay; but if such person admits he has no goods, and thereby waives the right to have the amount levied by distress, the Magistrate may proceed to imprison him in the civil jail. The warrant of distress cannot have currency simultaneously with the imprisonment.—Bisheshwar Shaha v. Bishwambhur Sircar and others, 23 W. R. 54.

WHERE a complainant prefers three charges of three distinct offences, two of which are triable under this chapter as summons-cases, and the other is a warrant-case, the Magistrate can, in the two summons-cases, award amends to the accused if he considers the two charges triable under this section to have been vexatious—Modhoosoodun Ghose (*alias* Madhab Chunder Ghose) v. Joyram Hazra and others, 13 W. R. 39. But an award of compensation was set aside as illegal in a case of criminal force and theft or robbery, because the charge was in part one of theft or robbery, which did not come under this chapter, and because criminal force really was used to the complainant.—Gunamanee v. Haree Dutta, 18 W. R. 6.

A KARKOON on the establishment of a Civil Court, entrusted with the execution of a writ, reported to the Court that a particular person obstructed him in attaching property as commanded by the writ; and a report was thereupon made by the Court to a Magistrate, with a view to proceedings being taken against the obstructor. The Magistrate acquitted the accused, and ordered the karkoon to pay the accused compensation under this section: *Held* that such last-mentioned order was wrong, the karkoon not being a complainant within the meaning of the section. In such a case as the above, the Subordinate Judge should be regarded as the complainant; and he, having acted judicially, was not liable to the penalty provided in this section.—*In re* Keshav Lakshman, 1 L. R., 1 Bom. 175.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Act X., 1872, Procedure in warrant-
s. 213. cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases,

WARRANT-CASE means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months.—S. 4, cl. s.

Act X., 1872,
s. 190.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution.

Act X., 1872,
s. 362, para.
1.
Act IV., 1877,
s. 143, para.
1.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

A PRISONER arrested under a warrant should be brought promptly before a Magistrate, who has then no authority to further detain him in custody or to remand him to prison without some reason made manifest to him, either in the shape of sworn testimony given before him, or of some other form which can be put upon the record, and which is sufficient to justify him in sending the prisoner to prison.—*Abdool Kader Khan v. The Magistrate of Purneah*, 20 W. R. 23; 11 B. L. R., App., 8.

253. If, upon taking all the evidence referred to in section 252, and

Act X., 1872,
s. 215, with
Expln. III.

making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebuted, would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

A MAGISTRATE cannot, without hearing the evidence against the accused, pass an order of discharge in a non-cognizable case, on the ground that the police illegally arrested without a warrant.—*Sangapa Sankrapa*, Bom. H. C., May 21, 1873.

WHERE no charge in writing has been drawn up, and the prisoner has not been asked to make his defence, the Magistrate, if he thinks that no offence has been proved, can only discharge and not acquit a prisoner. Nor can the Magistrate acquit a prisoner whom he has not jurisdiction to try.—*Reg. v. Robert Sheriff*, 6 W. R. 13.

A MAGISTRATE is bound, before he discharges an accused person under the above section, to examine all the witnesses, and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution.—*Empress on the prosecution of Johardi Sheikh v. Hematullah*, 1 L. R., 3 Cal. 389. See also 1 L. R., 2 All. 447.

WHERE a warrant-case of a nature not compoundable under s. 214, Penal Code, was "dismissed" on the parties coming to an amicable settlement, it was held that the "dismissal" was equivalent to a discharge under this section, and that the composition did not affect the revival of the prosecution, if that should otherwise be thought necessary or expedient.—*Reg. v. Devana and Somshekar*, 1 L. R., 1 Bom. 64.

UNDER the Code of 1872, where a prisoner had been discharged by a Subordinate Magistrate in a case not exclusively triable by a Court of Session, and the District Magistrate considered that the order of discharge was improper, he could not, unless evidence was forthcoming which was not before the Magistrate in the original proceedings, revive the proceedings before the Subordinate Magistrate, but his only course was to refer the proceedings for the opinion of the High Court.—See *In re Mohesh Mistrce*, 1 L. R., 1 Cal. 282; *Empress v. Gowadapa bin Venkugowda*, 1 L. R., 2 Bom. 534; *Empress v. Donnelly*, 1 L. R., 2 Cal. 405; *Ishen Chunder Kurnokar v. Hurry Doyal Kurnokar*, 3 Cal. Law Rep. 263. But s. 437 of the present Code supercedes the above provision. The section runs thus: "On examining any record under s. 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any one of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under s. 203, or into the case of any accused person who has been discharged."

254. If, when such evidence and examination have been taken and

Act X., 1872,
s. 216, with-
out Explan-
ations I & II.
Act XI., 1874,
s. 16.

Charge to be framed when made, the Magistrate is of opinion that there offence appears proved. is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate

Act IV., 1877, is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

A MAGISTRATE is not authorized to dismiss a case because he finds in the course of investigation that the facts disclose an offence other than, or in addition to, that complained of; but is bound to adjudicate on the original charge.—*Degumber Paul v. Kally Dass Dutt*, 8 W. R. 82.

A MAGISTRATE tried and acquitted a person accused of an offence without preparing in writing a charge against him. Such omission did not occasion any failure of justice. It was accordingly held that such omission did not invalidate the order of acquittal of such person, and render such order equivalent to an order of discharge; and such order was a bar to the revival of the prosecution of such person for the same offence.—*Einpress v. Gurdv and another*, 1 L. R., 3 All. 129.

ALTHOUGH the omission to draw up a charge was a very great irregularity, yet it would form no ground for setting aside the proceedings, unless the omission occasioned a failure of justice.—*Reg. v. Kabhai Ravabhai*, 5 Bom. H. C. Rep., Cr. Ca., 40. Thus, where the Magistrate gave the prisoner clearly to understand what the charge against him was, the omission to draw up a charge was held to be one which did not occasion a failure of justice.—*Blugwan v. Dayal Gope*, 10 W. R. 7. It should, however, be borne in mind that the omission to draw up a charge is always an exceedingly grave irregularity, and may be productive of great injustice to the prosecution as well as to the prisoner.

A MAGISTRATE is not restricted to the charges contained in the complaint. Where the evidence discloses an offence different from that charged, the Magistrate is competent to inquire into, and proceed against the accused with regard to, the other offence. Thus, where a complaint, laid before a Magistrate, F. P., by certain Government employés, accused the prisoner of criminal breach of trust of their wages, but from the evidence adduced it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money, it was held that the Magistrate, F. P., had power to frame a charge against, and convict, the prisoner of the latter offence, without a fresh complaint being made to him.—*Reg. v. Dhondoo Ram Chandra*, 5 Bom. H. C. Rep. 100.

THE course to be taken by a Magistrate before preparing the charge in a trial under this chapter must depend upon the circumstances of each particular case. It is not necessary for him to examine more witnesses than are sufficient to convince him of the truth of the charge, and with that view it is competent to him to put questions to the accused under s. 342. The answers given to those questions (if any are given) will generally have a great effect upon the question as to the witnesses necessary to be examined on the part of the prosecution; and if, after the complainant has been examined, questions put to the accused elicit answers which leave no doubt as to the commission of the offence, there seems to be no reason why the Magistrate should not then frame the charge, and call upon the accused to plead. The whole proceedings must, of course, be recorded as required by the Code.—*Mad. H. C. Pro.*, Dec. 16, 1864; *Weir*, p. 45.

Act X., 1872, s. 217. 255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.
Act IV., 1877, ss. 120, 122. Plea.
Cf. Act X., 1872, ss. 237, para. 2, 324. If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

WHERE a plea does not amount to a clear confession, it is necessary that the charge should be proved in the regular way. It is illegal to infer a confession from the statements made.—7 *Mad. H. C. Pro.*, Dec. 14, 1871; *Mad. Jur.* 136. See the case of *Gopal Dhanuk*, *infra*.

WHERE a person, accused of murder, acknowledged having struck his victim, but repudiated the intention to murder, and the Sessions Judge accepted this acknowledgment as a plea of guilty, and omitted to record any further evidence, it was held that

the Judge was bound to accept the statement of the accused as a whole, if it was taken as a confession at all. Conviction for murder accordingly set aside, and new trial ordered.—*Reg. v. Sonaoollah*, 25 W. R. 23.

A PRISONER, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. *Held* that the conviction was bad.—*In re Gopal Dhanuk*; *Empress v. Gopal Dhanuk*, I. L. R., 7 Cal. 9; 8 Cal. Law Rep. 471.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

Act X., 1872,
s. 218.
Act IV., 1877,
s. 121.

If the accused puts in any written statement, the Magistrate shall file it with the record.

WHEN the charge has been framed, and the defendant put on his defence, he has a right to have the prosecutor's witnesses recalled for the purpose of cross-examination.—*Belilios v. Reg.*, 19 W. R. 53.

In the trial of warrant-cases, the accused may, after the charge is drawn up, and the witnesses for the defence have been examined, recall and cross-examine the witnesses for the prosecution.—*Talluri Venkayya v. Reg.*, I. L. R., 4 Mad. 130.

In a warrant-case, the accused is entitled to recall and cross-examine prosecution-witnesses, and in a case in which this right was refused by the Magistrate, and a good portion of the imprisonment ordered had been suffered, the High Court refused to order a new trial, but recorded an order of acquittal.—*Nobin Chander Banerjee and another, Petitioners*, 25 W. R. 32.

WITNESSES summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right; and, *a fortiori*, if such a witness is called and examined by the Court under s. 165 of the Evidence Act, the prisoner should be allowed to cross-examine.—*Empress v. Girish Chunder Taluqdar*, I. L. R., 5 Cal. 614; 5 Cal. Law Rep. 346.

THE right of an accused person to recall and cross-examine the witnesses of the prosecution must be exercised at the time when the charge is read and explained to him under the preceding section, and, if not exercised at that time, it cannot afterwards be insisted on, although it is in the discretion of the Magistrate to recall the witnesses if he think fit.—*In re Sheikh Faiz Ali and others*, 8 Cal. Law. Rep. 325; I. L. R., 7 Cal. 28.

AN accused person, when put on his defence, is not precluded from exercising the right of cross-examining witnesses for the prosecution by reason of his having cross-examined them before he was put on his defence, or by reason of his not having, *suo motu*, expressed his wish to do so at the time he was called upon to enter on his defence, and when the witnesses were in attendance in Court, and did not require to be re-summoned.—*Reg. v. Lall Singh*, 6 All. 270.

THE charge having been read to the accused person, he stated his defence to the same, upon which the Magistrate (the witnesses for the prosecution being in attendance) called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses for the defence, who were not in

attendance. The Magistrate then discharged the witnesses for the prosecution, and adjourned the trial for the production of the witnesses for the defence. *Held* (*per* Spankie, J.) that the accused was not entitled to have the witnesses for the prosecution summoned, in order that they might be cross-examined by the accused, on the date fixed for the examination of the witnesses for the defence.—*Empress v. Baldeo Sahai*, I. L. R., 2 All. 253.

As a rule, the proper and convenient time for the purpose of cross-examination of the witnesses for the prosecution is at the commencement of the accused person's defence; but it is in the discretion of the Criminal Court to allow the accused to recall and cross-examine the witnesses for the prosecution at any period of the defence, when the Court may think such a step right and proper. It is incumbent upon a Court, when it discharges a witness from the duty of attendance before the trial is ended, to ascertain from the accused whether he has, or is likely to have, any need of the witness's testimony; and if he has such need, then to take such steps for ensuring the presence of the witness at the required time as may be necessary.—*Khurruckdharee Singh v. Pershadi Mundul*, 22 W. R. 44.

THE following important remarks were made by Turner, J., on the question of a prisoner's right to recall and cross-examine witnesses for the prosecution: "I am of opinion that the Magistrate ought not, of his own motion, to discharge the witnesses for the prosecution until the accused person has exercised or waived his right of cross-examination. When (as frequently happens) it becomes necessary to summon witnesses for the defence from a distance, and consequently to adjourn the hearing for some days, the necessity of retaining in attendance the witnesses for the prosecution must occasion considerable inconvenience to the witnesses and expense to the public. Therefore, the Magistrate should in all cases, before granting an adjournment, inquire of the accused if he desires to exercise his right of recalling the witnesses for the prosecution, or consents to the discharge of any or all of them. If the accused consents to their discharge, and they are discharged accordingly, he is not, in my opinion, entitled to have them re-summoned as a matter of right, but it would be in the discretion of the Magistrate to re-summon them. Whether, if the Magistrate, before granting an adjournment, called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, the Magistrate would thereupon be at liberty to discharge the witnesses for the prosecution, need not now be determined. In the present instance the Magistrate did not call upon the accused to exercise his right, and there is no sufficient proof that the accused consented to the discharge of the witnesses: he was probably not aware that he had any option in the matter, and therefore it would be an unsound inference from his silence that he consented to it. I must then, in this case, hold that the accused was entitled to have the witnesses whom he desired to cross-examine re-summoned."—*Reg. v. Lall Mahomed*, 6 All. 284.

A MAGISTRATE cannot refuse to allow witnesses whom he allowed to be cross-examined by the accused previous to the preparation of a charge to be recalled and cross-examined after the accused has been put upon his defence, treating them as witnesses for the prosecution.—*In re Thakoor Dyal Sen*, 17 W. R. 51.

The following important judgment was delivered by Couch (C.J.) in this case (*Ainslie, J.*, concurring):—

"The direction in s. 252 of the Criminal Procedure (Code s. 256 of this Code) is express that, if the accused person has any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses, if in attendance, and shall be allowed to recall and cross examine the witnesses for the prosecution.

"It does not clearly appear whether it was intended by the Code that there should be, previous to the preparation of the charge, a full cross-examination by the accused or by his pleader; it would rather seem that that was not contemplated, and that the Magistrate should, in the first instance, examine the witnesses with a view to seeing whether there was a *prima-facie* case against the accused person, and then that he should prepare the charge.

"Now, I do not say that, if an accused person or his pleader went into a full cross-examination before the preparation of the charge, and were told that, if he did that, he might be waiving his right to a further cross-examination after the charge had been prepared, he would not be precluded from the subsequent cross-examina-

tion. It is possible that, if put to it, he might be obliged to elect between the two, and not to have the inconvenient proceeding of the whole of the cross-examination being again repeated.

"But here that does not seem to have been done. The Magistrate appears to have allowed a cross-examination before the charge was prepared; but when the accused was put upon his defence, it might be very important that some further questions should be put to the witnesses for the prosecution in order to elicit facts which might constitute a defence for him. I think that the Magistrate had no power to say that this should not be done, and that the cross-examination, which had been already had, should be the only cross-examination in the case. If the privilege of cross-examination had been abused, and questions which had been put before, and appeared to have been answered (the witnesses understanding the questions), were repeated, the Magistrate might have stopped that, and confined the cross-examination to its proper limits. I think it was not competent to him to refuse to allow the witnesses to be recalled and cross-examined after the accused had been upon his defence.

"Also, the subsequent section would entitle the accused person to call the witnesses as his own. Of course, he would be in a different position then, and would not be allowed to cross-examine them, and treat them as witnesses for the prosecution. What he really required, and what he was entitled to, was to have them recalled, and to cross-examine them, treating them as witnesses for the prosecution.

"We think there has been an error in the procedure which may have prejudiced the accused, and therefore that the conviction and confirmation of it must be set aside, and the case must be ordered to be retried by the Magistrate."

257. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process, unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Process for compelling production of evidence at instance of accused. Act X., 1872, s. 362, para. 2.
Act IV., 1877, s. 143, para. 2.
Of ss. 252 and 208, *supra*.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

A WITNESS is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence.—I. L. R., 4 Bom. 619.

THE High Court refused to issue a commission in a criminal case, on the ground that such a course would be unsatisfactory and dangerous to the interests of the prisoner.—*Empress v. Connell*, I. L. R., 8 Cal. 896.

A PARDA-WOMAN summoned as a witness in a criminal case has a right to be exempted from personal attendance at Court, and to be examined on commission.—In the matter of the petition of Harasundari Chowdhurain, I. L. R., 4 Cal. 20.

It is only in extreme cases of delay or expense that the personal attendance of a witness before the Court of Session should be dispensed with, and the evidence given by him before the committing Magistrate referred to.—In the matter of the petition of Harasundari Chowdhurain, I. L. R., 2 All. 646.

WHERE a Magistrate trying an offence rejected an application by the accused person that a certain person might be examined on his behalf either in Court or by commission, without recording his reasons for refusing to summon such person, it was held that the conviction of the accused person must be set aside, and the case be re-opened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law.—*In re Satnarain Singh and another* I. L. R., 3 All. 392.

THE accused were charged with rioting, and, being called up for their defence, named several witnesses, and summonses on the following morning were issued for their appearance, but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and he convicted the accused : *Held* that, this being a warrant-case, it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might, at his discretion, have adjourned the case.—*Empress on the prosecution of Dinanath Ghatak v. Raj Kumar Singh and another*, 1. L. R., 3 Cal. 573.

Act X., 1872,
s. 220, omit-
ting the Ex-
planation.

See *infra*, s.
317.

Act IV., 1877,
s. 126, first
half.

258. If, in any case under this chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

Conviction.

If, in any such case, the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

RECORDS of a previous conviction should be put in as evidence after conviction and before sentence.—W. R. C. R. 38.

NO JUDGMENT of acquittal can be recorded unless a charge has been drawn up.—*Reg. v. Japit Ahir*, 22 W. R. 25.

IF THE Magistrate convicts, he is bound to pass *some* sentence. He cannot merely warn and discharge the accused.—3 W. R. 15, C. L.

AFTER an accused person has been acquitted, it is not competent to the Sessions Judge to interfere.—*Reg. v. Venku Narsa*, 9 Bom. H. C. Rep. 170.

A MAN accused of theft was acquitted by the Deputy Magistrate. The District Magistrate, at the instance of the police, ordered the case to be retried. It appeared that the Deputy Magistrate had not framed any charge, but that no failure of justice had been occasioned by his not doing so. *Held* that the Magistrate had no power to order a retrial without first setting aside the order of acquittal; and that he had no power to set aside the order of acquittal, as the case had not been appealed to him.—*In re Joja Pashan*, 3 Cal. Law Rep. 131.

Act X., 1872,
s. 215, Expl.
I. Contrast
Act IV., 1877,
s. 118; but
see s. 133 of
same.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

CHAPTER XXII.

OF SUMMARY TRIALS.

Act X., 1872,
ss. 222, 223,
224.

Power to try summarily.

260. Notwithstanding anything contained in this Code,

(1) the District Magistrate,
(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government, may try, in a summary way, all or any of the following offences :—

(a) Offences not punishable with death, transportation, or imprisonment for a term exceeding six months;

(b) Offences relating to weights and measures, under sections 264, 265, and 266 of the Indian Penal Code ;

(c) Hurt, under section 323 of the same Code ;

(d) Theft, under section 379, 380, or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(e) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees ;

(f) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees ;

(g) Mischief, under section 427 of the same Code ;

(h) House-trespass, under section 448 of the same Code ;

(i) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ; Act XI., 1874,
s. 17.

(j) Abetment of any of the foregoing offences ;

(k) An attempt to commit any of the foregoing offences, when such attempt is an offence :

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

In summary trials the formalities provided by this chapter should be strictly observed.—Reg. v. Johrie Singh, 22 W. R. 28.

A CHARGE of mischief, even if combined with one of theft, is triable summarily under this section.—Reg. v. Ramotar Panri, 25 W. R. 5.

WHERE the procedure is of a summary nature, the trial is summary, notwithstanding the length and carefulness of the record and decision.—Reg. v. Doma Ram, 24 W. R. 66.

THE summary conviction and punishment of two police-officers under s. 29, Act V. of 1861, by a Cantonment Magistrate, without formal trial, was held to be irregular and illegal.—Govt. v. Gridharee Lall and Sheikh Ahmed, 1 Agra H. C. R. 24.

A MAGISTRATE should not split up an offence for the purpose of giving himself summary jurisdiction. If he does so, and the offence is not triable summarily, the proceedings are void, under s. 530 of the Code of Criminal Procedure.—*In re* Abdool Kadir and others, 3 Cal. Law Rep. 44.

It is not in the power of the Magistrate, when a person is charged before him with a grave offence, to reduce the accusation of his own mere will to such dimensions as will make it triable summarily : the trial must be according to the nature of the charge.—Emaral Sheikh v. Mohammadi Sheikh, 24 W. R. 48.

AN OFFENCE under s. 49, Act XXI. of 1856 (Excise), can be tried summarily, the confiscation provided being merely a consequence of the conviction, and not forming part of the punishment for the offence.—*The Empress v. Baidyanath Das*, I. L. R., 3 Cal. 366 (F.B.), which overrules the case of *Khetpur Mohun Chowrunghce*, 22 W. R. 43, and the case of *Jodoo Nath Shaha*, 23 W. R. 33.

IN A case tried under the summary procedure authorized by s. 260 of the Code of Criminal Procedure, it must clearly appear on the face of the conviction that the case was dealt with as one of those which come under the purview of that section. If the case be one of theft, it should appear what the value of the property alleged to have been stolen really was.—Reg. v. Abheen Parrida and others, 20 W. R. 17.

WHETHER a case is triable summarily or not, must be determined by the complaint, not by an estimate formed by the Magistrate (*e.g.* of the worth of the property which the accused is charged with having stolen) after evidence has been

recorded, and such estimate cannot retrospectively warrant a mode of trial which was originally illegal.—*Ram Chunder Chatterjee v. Kanye Laha and another*, 25 W. R. 19.

WHETHER a case is triable summarily or not, must be determined by the offence complained of, and not by the offence proved. *Held* also that a Magistrate is bound to convict an accused person of the highest offence which is in his opinion proved, and not to select a minor offence which forms one of the component parts of a more serious offence, because it conforms more with his own ideas of justice.—*Ram Goti Shaha v. Joma Ghazi*, 3 Shome's Rep. 17.

WHERE, on the facts found by a Magistrate, an offence is established which he cannot try summarily, he is not competent to convict for an offence made up of only some of those facts in order to give himself jurisdiction. Such proceedings are void under s. 530 of the Code of Criminal Procedure, because he was not empowered by law to try the offender summarily.—*Chunder Seckhur Sookul and others v. Dhurm Nath Tewaree*, 1 Cal. Law Rep. 434.

WHERE an Assistant Commissioner in a non-regulation district, vested with first-class powers as a Magistrate and with summary jurisdiction in one place, had gone on furlough, and on his return been posted to another place, and there vested with the former only: *Held* that the second appointment was not a "transfer," and that the officer did not possess summary powers in his second charge.—In the matter of *Parasuram Borooah*, Petitioner, 1 L. R., 2 Cal. 117.

WHERE the imprisonment awarded on a summary conviction before a Magistrate had already expired, the High Court declined to go into the case on a reference from the Sessions Judge, because it would be no advantage to the prisoner to do so, and because, if the Magistrate's proceedings were quashed, the prisoner would be put to the risk of being tried again for the offence with which he had been charged.—*Kopil Dolai and others v. Kanhai Jenna*, 24 W. R. 71.

THE powers conferred upon Magistrates under the 18th chapter of the Code of Criminal Procedure were not intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of that chapter; but when a charge of a serious offence, one which the Magistrate is not competent to enquire into summarily, is preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases, and either to convict or acquit, or commit for trial, the person implicated.—*Chunder Shekhur Thakoor v. Nitaloo and another*, 22 W. R. 29.

WHERE a charge of rioting was tried summarily by the Magistrate as one of mischief and unlawful assembly, the Sessions Judge, relying on a case cited, submitted at the request of the accused that the summary order may be set aside, and the accused may be tried for rioting under the chapter of the Criminal Procedure Code relating to the trial of warrant-cases by Magistrates. The High Court declined to interfere at the instance of the accused persons, and distinguished this from the case cited by the Sessions Judge, as the reference there was made by the Magistrate in the interests of public justice.—*Reg. v. Abou Sheikh and others*, 23 W. R. 19.

IN A case in which the accused was charged with theft of a box containing Rs. 50 in cash and of the box worth 8 annas 6 pie, the Magistrate considered the box to be of no value and struck out the 8 annas 6 pie, and thereupon tried the case summarily under s. 260 of the Code of Criminal Procedure. *Held* that the Magistrate was not at liberty, upon his own authority and without taking evidence, to throw the box entirely out of consideration, as upon that depended his jurisdiction to dispose of the case summarily: such evidence should have been taken precisely in the same way as evidence upon the merits of the case, and as it was not taken, the Court held that the Magistrate had no jurisdiction in this case.—*Reg. v. Buzleh Ali*, 22 W. R. 65.

IN A case the charge was originally one of dacoity under s. 395, Penal Code, and the proceedings were first conducted under the chapter of the Code of Criminal Procedure relating to summary trials, but during the progress of the case the charge under s. 395 was lost sight of, and the accused were put on their defence on a charge of being members of an unlawful assembly under s. 143, Penal Code, and the proceedings were continued in a summary way under the chapter relating to

the trial of warrant-cases by Magistrates. *Held* that, had the complaint been one under s. 143, Penal Code, the Magistrate could have tried it in a summary manner; but as the complaint was of a charge of dacoity under s. 395, the Magistrate had no jurisdiction to try the case in a summary manner.—*Dwarkanath Mozoomdar v. Nalu Das*, 21 W. R. 89.

A CHARGE of an illegal demand of toll under Act VIII. of 1851, s. 6, ought not to be dealt with summarily. The power of levying toll under Act VIII. of 1851 is vested in the Lieutenant-Governor of Bengal, and is restricted to levying tolls only at the toll bar: the establishment of a toll must be, by some distinct resolution of the Government, notified in some way or other by the Government. The word "extortionately" in s. 6, Act VIII. of 1851, is not used in the same sense as it is used in the Penal Code, but as meaning an unlawful demand of toll accompanied by pressure: the pressure in this case being the exercise of the powers indicated in s. 3 of the Act by seizing the complainant's horses and carts, and detaining them until the toll was paid.—*Uttom Chunder Gangooly v. Issur Chunder Mookerjee*, 22 W. R. 76.

THE accused in this case were convicted by the Magistrate summarily of offences under ss. 352 and 341, Penal Code, although it was contended on their behalf that, if guilty, they ought to have been convicted under s. 353, in respect of which a summary trial could not be held. The Sessions Judge, on the Magistrate's own judgment, recommended that the convictions should be set aside, on the grounds (1) that the facts showed that the accused should have been convicted under s. 353 or under s. 342, and (2) that the Magistrate had no power to convict of the lesser offence, and so give himself jurisdiction to try the case summarily. *Held*, in concurrence with the Sessions Judge, that the accused ought to have been tried under s. 353. The Magistrate's summary proceedings were accordingly set aside, and a fresh trial directed.—*Reg. v. Bance Madhub Dass and others*, 23 W. R. 3.

NO MAGISTRATE is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not a liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then, by inflicting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his right of appeal.—*Empress v. Abdul Khan*, and *Empress v. Gholam Mahomed*, 1 L. R., 4 Cal. 18.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

Act X., 1872,
s. 225.

Power to invest Bench of Magistrates invested with less power.

trates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

(a) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447;

(b) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(c) Abetment of any of the foregoing offences;

New.

(d) An attempt to commit any of the foregoing offences, when such attempt is an offence.

New.

THE following is the subject-matter of each of the sections of the Penal Code alluded to in s. 261:—

S. 277. Defiling the water of a public spring or reservoir.

S. 278. Making atmosphere noxious to health.

S. 279. Driving or riding on a public way so rashly or negligently as to endanger human life, &c.

S. 285. Dealing with fire or any combustible matter so as to endanger human life, &c.

S. 286. So dealing with any explosive substance.

S. 289. A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.

S. 290. Committing a public nuisance.

S. 292. Sale, &c., of obscene books, &c.

S. 293. Having in possession obscene book, &c., for sale or exhibition.

S. 294. Obscene songs.

S. 323. Voluntarily causing hurt.

S. 334. Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.

S. 336. Doing any act which endangers human life or the personal safety of others.

S. 341. Wrongfully restraining any person.

S. 352. Assault or use of criminal force otherwise than on grave provocation.

S. 426. Mischief.

S. 447. Criminal trespass.

A BENCH of Magistrates, whether empowered under s. 260 or s. 261 of this Code, cannot try a case of breach of the peace or any offence except those mentioned in ss. 260 and 261.—Reg. v. Debheki Pattak, 21 W. R. 12.

Act X., 1872,
s. 226.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

Limit of imprisonment.

Act X., 1872,
s. 227.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

- (a) the serial number;
- (b) the date of the commission of the offence;
- (c) the date of the report or complaint;
- (d) the name of the complainant (if any);
- (e) the name, parentage, and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), or clause (f) of section 260, the value of the property in respect of which the offence has been committed;
- (g) the plea of the accused and his examination (if any);
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;
- (i) the sentence or other final order; and
- (j) the date on which the proceedings terminated.

WHERE a Magistrate of the first class passes a sentence of imprisonment and fine, his order is appealable. He cannot, therefore, in such a case, make up his record in the manner described in this section.—*In re Sher Mahomed and another*, 2 Cal. Law Rep. 511.

A MAGISTRATE, in cases where no appeal lies, is bound to record a brief statement of his reasons for convicting an accused. Where a person is arrested, and certain charges are entered against him in the police-book, he should not, on the day of trial, be called upon to meet other charges without previous intimation being given to him of the additional charges.—*Empress v. Radoinath Shaha*, 1. L. R., 8 Cal. 195.

ALTHOUGH generally it is not necessary, in cases in which no appeal lies, for a Magistrate to record the reasons for passing his judgment, yet under s. 263, in case of conviction, he ought to enter in the register, to be kept under that section, a brief statement of the reasons for such conviction; but an omission to do so may, under some circumstances, be remedied at a subsequent time.—*In re Dowlat Singh*, 6 Cal. Law Rep. 273.

ALTHOUGH a Magistrate is not required to record any evidence under this chapter, he should, in recording his reasons for the conviction, state them so, that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction. Where they were not so stated, the High Court, on motion, set the conviction aside.—*In re Panjab Singh and another*; *Empress v. Panjab Singh and another*, 1. L. R., 6 Cal. 579.

IF THE evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted, he ought to acquit them. In this case, from the substance of the evidence on the records, the Sessions Judge could not form any opinion as to its credibility, and there was nothing to show that the witnesses spoke the truth, or that the conviction was wrong. The Judge accordingly dismissed the appeal, but the High Court held that he should have acquitted the prisoners. The conviction was quashed. See, however, the decision of the Allahabad High Court, *infra*.—*Kheraj Mullah and others v. Janab Mullah*, 20 W. R. 13; 11 B. L. R. 33.

264. In every case tried summarily by a Magistrate or Bench in Act X., 1872,
s. 228.

Record in appealable which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

WHERE the Magistrate of the District trying a case in a summary way omitted to embody in his judgment the substance of the evidence, the Chief Court quashed the conviction, and directed a new trial.—*Baklu v. The Crown*, Panj. Rec., No. 2 of 1874, Cr.

UNDER s. 264 Magistrates are not bound to record the substance of every separate deposition, but to state generally what is the substance of the witness's evidence.—*Kristodhone Dutt, Executor to the Estate of Shibkrisho Dutt, v. The Chairman of the Municipal Commissioners of the Suburbs of Calcutta*, 25 W. R. 6.

K WAS tried by a Magistrate in a summary way, and convicted. He appealed to the Court of Session, which quashed his conviction, on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate's judgment. *Held* that the Court of Session should not have quashed the conviction merely by reason of such defect, but, if it found it impossible to dispose of the appeal because of such defect, it should have required the Magistrate to repair the same by recording a judgment in which the substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a re-trial with that view.—*The Empress v. Karan Singh*, 1. L. R., 1 All. 680.

Act X., 1872, s. 229. **265.** Records made under section 263, and judgments recorded under section 264, shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Act X., 1872, s. 230. The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

Act X., 1875, s. 3. **266.** In this chapter, except in section 307, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor-General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Act X., 1875, s. 32. **267.** All trials under this chapter before a High Court shall be by jury ; and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

A PRISONER, not being a European British subject, who is not charged jointly with a European British subject, is not entitled to be tried by a jury of which at least five persons shall not be Europeans or Americans.—*Reg. v. Lalubhai Gopal Dass and others*, I. L. R., 1 Bom. 232 (F.B.).

Act X., 1872, s. 232. **268.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.

THE trial by a jury of an offence triable with assessors is not invalid on that ground ; but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trial by jury is not invalid.—*Empress v. Mahima Chandra Ray and others*, I. L. R., 3 Cal. 765.

AT a trial before a Sessions Court, the Judge, in the examination-in-chief of the witnesses for the prosecution being finished, questioned the witnesses at considerable length upon the points to which he must have known that the cross-examination would certainly and properly be directed : *Held* that such a course of procedure was irregular, and opposed to the provisions of Act I. of 1872, s. 138. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have

omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of that Act.—*Noor Bux Kazi v. The Empress*, 1. L. R., 6 Cal. 279.

269. The Local Government may, by order in the official Gazette, Act X., 1872

Local Government may direct that the trial of all offences, or of any s. 233, paras. 1 and 2.
order trials before Court of particular class of offences, before any Court of
Session to be by jury. Session, shall be by jury in any district, and
may revoke or alter such order.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for all such offences.

IN A trial by a jury before a Court of Session upon charges, some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority of four to one, returned a verdict of "not guilty" on all the charges. *Held* that it was not competent to the Judge, who disagreed with the verdict, to treat the trial, so far as it dealt with the latter charges, as a trial with the aid of assessors, and, concurring with the minority, to convict and sentence the accused persons. It was the duty of the Judge, in such a case, to have accepted the verdict as one of acquittal, and then to have passed orders in accordance with s. 306 of the Code of Criminal Procedure.—*Bhothnath Dey and others*, Appellants, 4 Cal. Law Rep. 405.

Trial before Court of Ses- **270.** In every trial before a Court of Ses- Act X., 1872,
sion, the prosecution shall be conducted by a s. 235.
Public Prosecutor. Public Prosecutor.

AN ADVOCATE of the High Court may appear on behalf of the prosecution in the Court of Session and conduct the prosecution without being specially empowered by the Magistrate of the district for that purpose.—*Gungadthur Sircar*, Petitioner, 23 W. R. 14.

IN THIS case the High Court strongly commented upon the objectionable practice of permitting police-officers to conduct prosecutions in the Sessions Court. A witness when under examination-in-chief before the Court of Session should not have his attention directed to his deposition before the Magistrate. He may be cross-examined as to previous statements made by him in writing, when his attention may be drawn to the parts of the former writing which are to be used for the purpose of contradicting him.—*Reg. v. Ram Chunder Sircar and Binode Sheikh*, 13 W. R. 18.

WHETHER or not a private complainant is permitted under s. 495 to conduct a case as prosecutor, he may instruct Counsel, who shall be entitled to appear, under No. 7, Chapter XI. of the Bombay High Court Rules, and the Public Prosecutor may thereupon avail himself of the Counsel's services under s. 493. The effect of s. 235 of the Code, read with ss. 495 and 493, is to make every case tried by the Court of Session a case falling within the provisions of s. 493, that is to say, the Public Prosecutor may always avail himself of the services of Counsel retained by a private individual, and in so doing he does not deprive himself of the management of the case. Where the assistance of Counsel has once been accepted, that assistance is not excluded at the stages of the trial (summing-up by prosecutor and his reply) to which ss. 289, 290, and 292 apply.—*In re Narayan M. Pendshi*, 11 Bom. H. C. Rep. 102.

B.—Commencement of Proceedings.

271. When the Court is ready to commence the trial, the accused Act X., 1872,

Commencement of trial. shall appear or be brought before it, and the s. 237.
charge shall be read out in Court and explained Act X., 1875,
to him, and he shall be asked whether he is guilty of the offence charged, ss. 28, 29.
or claims to be tried.

Act X., 1875, Plea of guilty.
s. 73.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

WHERE a plea does not amount to a clear confession, the Judge should not draw an inference of guilt, but proceed to hear the case.—*Mad. H. C. Pro.*, Dec. 14, 1874; 7 *Mad. Jur.* 136.

AN ACCUSED should plead by his own mouth, and not through his counsel or pleader, though his counsel or pleader may, at the proper time, address the Court on his behalf.—*Reg. v. Roopa Gowalla*, 15 *W. R.* 42.

WHEN arraigning an accused, and before receiving his plea, the Court should be careful to insure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly the nature of the charge to which he is called upon to plead.—*Empress v. Viambilee*, *Viambilee v. The Empress*, 1 *L. R.*, 5 *Cal.* 826.

IN ALL criminal cases tried in the mufassal, it is incumbent on the accused, since the passing of Act I. of 1872, to prove the existence (if any) of circumstances which bring the offence charged within the general or special exceptions or provisos contained in any part of the Penal Code or in any law defining such offence. *Quare* as to the state of the law in the Presidency-towns.—In the matter of the petition of Sivaprosad Panda, 1 *L. R.*, 4 *Cal.* 124.

THE prisoner having admitted before the Court of Session that he had killed his wife, no assessors were empanelled. At the end, however, of his confession, he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and having come to the conclusion that there was no reason to doubt, from the prisoner's conduct, either prior or subsequent to the murder, that, in committing the murder he knew that he was doing a wrong act, convicted the prisoner. *Held* that the plea was, in effect, one of not guilty, and that the trial should not have proceeded without assessors, and that it should be quashed.—*Reg. v. Chiet Ram*, 5 *N. W. P.* 110.

A PRISONER, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by s. 271, appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. *Held* that the conviction was bad.—*Empress v. Gopal Dhanuk*, 1 *L. R.*, 7 *Cal.* 96.

Act X., 1872, 272. If the accused refuses to, or does not, plead, or if he claims to
s. 238. be tried, the Court shall proceed to choose jurors
Act X., 1875, Refusal to plead or claim
s. 30. to be tried. or assessors as hereinafter directed, and to try
the case :

Act X., 1872, Provided that, subject to the right of objection hereinafter mentioned,
s. 265. the same jury may try, or the same assessors
Act X., 1875, Trial by same jury or
s. 34. assessors of several offend-
ers in succession. may aid in the trial of, as many accused persons
successively as the Court thinks fit.

A SESSIONS JUDGE, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate.—*Reg. v. Hursook*, 2 *N. W. P.* 479.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge, or any portion thereof, is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry. Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

C.—Choosing a Jury.

Number of jury. **274.** In trials before the High Court the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

A JUDGE is not bound to try a native Christian with the aid of a Christian jury. —Bharat Chunder Christian. Appellant. 1 W. R. 2.

A PERSON, not a European British subject, nor charged jointly with one, is not entitled to be tried by a jury, of which at least five persons shall not be Europeans nor Eurasians. —Lalubhai Gopaldass, 1 L. R., 1 Bom. 232.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct :—

Provided that—
first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed ;

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present ; and

thirdly, in the Presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs, the jurors shall be chosen from the special jury list hereinafter prescribed.

S. 276 contemplates that the names of the jury to be “chosen by lot” shall all be drawn out of one box containing the names of all persons summoned to act as jurors.—Reg. v. Vithal Dass Pranjivan Dass and others, 1 L. R., 1 Bom. 462.

- Act X., 1872, s. 243, paras. 1 and 2.
Act X., 1875, s. 53.
- 277.** As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.
- Names of jurors to be called.
- Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated :
- Objection to jurors.
- Act X., 1875, s. 47, para. 1.
- Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown, and eight on behalf of the person or all the persons charged.
- Objection without grounds stated.
- Act X., 1872, ss. 244, 405, 406.
Act X., 1875, ss. 47, 54.
- 278.** Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—
- Grounds of objection.
- (a) some presumed or actual partiality in the juror ;
 - (b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years ;
 - (c) his having, by habit or religious vows, relinquished all care of worldly affairs ;
 - (d) his holding any office in or under the Court ;
 - (e) his executing any duties of police or being entrusted with police-duties ;
 - (f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;
 - (g) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted ;
 - (h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.
- Act X., 1872, s. 245.
Act X., 1875, s. 57.
- is given, or, when such evidence is interpreted, the language in which it is interpreted ;
- (h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.
- Act X., 1872, s. 243, para. 3.
Act X., 1875, ss. 48, 55.
Act X., 1872, s. 243, para. 4.
Act X., 1875, s. 56.
- 279.** Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.
- Decision of objection.
- If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons, and chosen in manner provided by section 276 ; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.
- Supply of place of juror against whom objection allowed.
- Act X., 1872, s. 246.
Act X., 1875, s. 58.
- 280.** When the jurors have been chosen, they shall appoint one of their number to be foreman.
- Foreman of jury.
- The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.
- If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873. New.

Swearing of jurors.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged, and a new jury chosen. Act X., 1872, s. 254.

Procedure when juror ceases to attend, &c.

In each of such cases the trial shall commence anew.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar. Act X., 1875, s. 99.

Discharge of jury in case of sickness of prisoner.

D.—Choosing Assessors.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such. Act X., 1872, s. 239.

Assessors how chosen.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors. Act X., 1872, s. 259.

Procedure when assessor is unable to attend.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused. Act X., 1872, s. 247. Act XI., 1874, s. 19. Act X., 1875, s. 59.

Opening case for prosecution.

The prosecutor shall then examine his witnesses.

Examination of witnesses.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence. Act X., 1872, s. 248. Act X., 1875, s. 60.

Examination of accused before Magistrate to be evidence.

A PRISONER may be convicted on his own uncorroborated confession.—Reg. v. Runjeet Sontal, 6 W. R. 73.

THE whole (and not a part) of a prisoner's confession must be taken in order to his conviction.—Reg. v. Chokoo Khan and another, 5 W. R. 70.

WHERE there is no evidence against a prisoner, the Judge ought to charge the jury for an acquittal, and not leave the jury to say whether the prisoner is guilty or not.—Reg. v. Greedhary Manjee, 7 W. R. 39.

A JUDGE should compare the statements of the witnesses recorded by the Magistrate at the preliminary investigation with the evidence of the same witnesses at the Sessions.—Reg. v. Brindabun Bowree and others, 5 W. R. 54.

THE examination of the accused before the Magistrate must be given in evidence at the sessions-trial, whether it tells for or against the prisoner; and it is not in the discretion of the prosecution to put in that examination or not.—Reg. v. Sheikh Meher Chand, 13 W. R. 63.

THE confession of a prisoner before a Magistrate, though retracted before the Judge, is admissible in evidence against the prisoner, provided the Judge be satisfied that it was voluntarily made.—Reg. v. Sreemutty Mongolah, 6 W. R. 81; Reg. v. Ghuree and others, 7 W. R. 41; Reg. v. Mussamut Jema, 8 W. R. 40.

AN admission by A and B that the crime charged against them was committed by C and D, and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. Previous statements of witnesses on oath are not available as evidence in a subsequent trial.—Reg. v. Kisto Mundul and others, 7 W. R. 8.

A PERSON may be convicted of murder on his own confession. Where a master accompanies a servant knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—Reg. v. Hyder Jolaha, 6 W. R. 83.

IN a trial before a Court of Session, the examination of the accused persons, which s. 287 requires to be given in evidence, should be read as part of the case for the prosecution before the case for the defence is entered upon, and marked as an exhibit. A note to the effect that this has been done should be entered in the record.—Mad. H. C. Pro., March 31, and Nov. 11, 1869; Weir, p. 44.

IT is not necessary for a Sessions Judge to read out to prisoners confessions made by them before a Magistrate, and ask them if they have any objection to the reception of these confessions. The examination of the prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *prima facie* proof of the circumstances.—Reg. v. Misser Sheikh and another, 14 W. R. 9.

THE prisoner retracted his statement when read over to him, and said that he was compelled to make it. The Judge, without making any enquiry or taking any evidence on the point, submitted the prisoner's statement to the jury as a confession. Held that the Judge was wrong in so doing, and that he should rather have charged the jury not to accept the prisoner's statement as a confession.—Reg. v. Gunesh Koormee, 4 W. R. 1.

WHERE a statement made by a prisoner before a Magistrate, though signed by the Magistrate, does not contain the certificate directed by s. 364, it does not of itself constitute *prima facie* evidence of the examination within the meaning of the said section; and if other proof is not given to show that the statement was made by the prisoner before the Magistrate, the statement is not admissible in evidence at the Sessions.—Reg. v. Petumber Dhoobee, 14 W. R. 10.

A PRISONER'S confession must be taken in its entirety. Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that, maddened at this sight, he killed both her and her paramour, it was held that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity.—Reg. v. Sheikh Boodhoo, 8 W. R. 38.

WHERE the only evidence in a sessions-trial was a confession made to a Magistrate, but subsequently retracted, and it was established that the police misconducted themselves in the search of the houses of the prisoners who confessed, and of others under trial, and produced evidence which was rejected as false, it was held that the prisoners could not safely be convicted on their own statements without any corroboration.—Sofiruddeen and others, Appellants, 2 Cal. Law Rep. 132.

BEFORE criminating a man upon his own statement under examination, it is necessary to see that such statement has been deliberately made and recorded; that, after being recorded, it has been shown or read to the accused; and that the examination has been attested by the signature of the Magistrate following a certificate to be given under his own hand. In order to bring a prisoner within s. 114 of the Indian Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed.—*Reg. v. Mussamut Niruni and Moniruddin*, 7 W. R. 49.

UNDER s. 30 of the Evidence Act, the confession of a prisoner, affecting himself and another person charged with the same offence, is, when duly proved, admissible as evidence against both, but such second person cannot, when it is uncorroborated as against him, be legally convicted on it. *Per* Garth, C.J.—Such evidence must be dealt with by the Court in the same manner as any other evidence. The weight, however, to be attached to such evidence, and the question whether, taken by itself, it is sufficient, in point of law, to justify a conviction, is a question for the Judge. Unsupported by other evidence, it, however, should be taken as evidence of the very weakest kind, being simply a statement of a third person not made upon oath or affirmation. If such confession is corroborated by other evidence, it is immaterial whether, in proving the case at the trial, the confession precedes the other evidence, or the other evidence precedes the confession. *Per* Jackson, J. (Macdonell, J., concurring).—Such evidence is not sufficient to support a conviction, even if corroborated by circumstantial evidence, unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction. *Per curiam*.—The word "Court" in s. 30 of the Evidence Act means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury.—*The Empress v. Aushootosh Chuckerbutty and others*, 1 L. R., 4 Cal. 483; 3 Cal. Law Rep. 270;

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case. Act X., 1872,
s. 249.
Act XI., 1874,
s. 20.
Act X., 1875,
s. 75.

A COURT of Session is not at liberty to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh.—*Reg. v. Majohur Roy*, 24 W. R. 11.

Per FIELD, J.—That there is a grave doubt whether the deposition of an approver, taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. Where a conditional pardon, granted to an approver, is withdrawn by the Sessions Court, the Judge ought to wait till the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver.—*In re Joyudee Paramanick and others*, 7 Cal. Law Rep. 66.

THE confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by s. 288; that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession, in order to afford *prima-facie* evidence under s. 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement, ought to give the facts necessary to render the deposition admissible under s. 288.—*Reg. v. Nussuruddin and another*, 21 W. R. 5.

A, B, AND C having been charged with murder before a Magistrate, two vakils presented their vakalatnamas, and applied to be allowed to conduct the defence of the accused. The Magistrate refused permission, and, after recording the depositions of the witnesses, committed the accused to take their trial before the Sessions Court. In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses, who, on being examined in the Sessions Court, denied all knowledge of the facts to which they had deposed before the Magistrate.

Two of them denied having made the statements recorded, while the third admitted the statements attributed to him, but asserted they were false, and made under pressure. The Sessions Judge, disbelieving the statements made in his Court, thereupon used the previous depositions as evidence in the case, and mainly upon these convicted the accused of murder, and sentenced them to transportation for life. Against this conviction and sentence the prisoners appealed to the High Court, on the ground that the previous depositions ought not to have been used as evidence in the case, as the Magistrate had refused to allow their pleaders to appear and cross-examine the witnesses who made the depositions. The High Court affirmed the conviction and sentence.—*In re Dham Mundul*, 6 Cal. Law Rep. 53.

UPON the trial of the prisoner for the murder of his wife and infant child, the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate. The Sessions Judge discarded the evidence taken before himself, and grounded his judgment on the evidence given before the Magistrate, and upon this evidence he convicted the prisoner, and sentenced him to death. Phear, J.—It appears to me that the Legislature, in framing this enactment, desired merely to authorize the Court to take a particular statement made by a witness before the committing Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent therewith was made by the witness before the Court itself, if the Court could see from the evidence of that same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief; not that the Court should discard wholly the testimony of witnesses given before it, and have recourse to the testimony of the same persons which was given elsewhere before another judicial officer on the occasion of making the investigation preliminary to the final trial. The discretion which is conferred by the section is to be exercised upon substantial materials rightly before the Court, and reasonably sufficient to guide the judgment of the Court to the truth of the matter, and not, as was the case here, upon mere speculation or conjecture. Morris, J.—It seems to me that, under this section, a Judge may base his judgment on the evidence given before the Magistrate in the presence of the accused, when there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is to a certain extent corroborated by independent testimony before himself.—*Reg. v. Amanullah*, 12 B. L. R. 15; 21 W. R. 49.

THE following important remarks were made by West, J., on s. 249 of the Code of 1872 as amended by s. 20 of Act XL of 1874 (corresponding with s. 288 of this Code: "We think that the purpose of s. 249 of the Criminal Procedure Code as recently amended is to make depositions given before Magistrates in the preliminary inquiry evidence for the purposes of the trial in the Court of Session, only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But we think that the exercise of this discretion, considering it as a matter of fact or of law, is open to review by this Court in appeal. When a case is under trial in a Court of Session, the Sessions Judge has the depositions given in the Magistrate's Court before him. If he finds that the statements of the witnesses in his own Court differ materially from those previously made by the same witnesses, it is his duty to examine them as to the discrepancies, and this is more specially his duty when the prisoners are undefended, and contradictory testimony is given for the prosecution. But if he thus examines the witnesses, he ought (see Taylor on Evidence, ss. 1300, 1301, and the Indian Evidence Act, s. 155), in ordinary cases, to make the depositions upon which he has examined them evidence in the case; he is at liberty to do so, and the power should be exercised so as to bring all relevant matter, so far as possible, under consideration in forming a judgment on the case. If the Sessions Judge has omitted to examine witnesses on obvious and important discrepancies in their statements, this Court will, in general, direct that such an examination be made, and the Sessions Judge, having the witnesses before him for such a purpose, will, in most cases, feel it his duty to make the former depositions evidence *quantum valeat* for the purposes of the final adjudication in appeal. The alternative is for this Court in such cases to order a new trial, on the ground that there has been a misuse of the Sessions Judge's discretion which may have caused a defeat of justice; but a new trial will not be ordered except in special cases"—*Reg. v. Arjun Megha and Mana Jeesa*, 11 Bom. H. C. Rep. 281.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence. Act X., 1872, s. 251, paras. 1 and 2. Act X., 1875, s. 62.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty. In such case it is not necessary to ask the assessors their opinion. —I. L. R., 1 All. 610.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case, and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

WHERE the Judge thinks that there is no ground for proceeding, and records a judgment of acquittal, it is not necessary to record the opinions of assessors.—Reg. v. Parvati, 7 Bom. II. C. Rep., Cr. Ca., 82.

WHERE the Court, without having first heard the evidence for the prosecution, examines the witnesses for the defence, it commits an irregularity: but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside.—In re Turebullah and others, 4 Cal. Law Rep. 338.

A JURY may be satisfied with a minimum of proof, and it is beyond the power of the High Court in such cases to interfere with its verdict; but when there is nothing which can, if believed, amount to proof, the case should not be put to the jury at all, as the verdict of guilty cannot, under such circumstances, be sustained.—Reg. v. Rutton Dass and Doorga Dass, 16 W. R. 19.

A SESSIONS *nathae* should contain the record of the defence set up by the prisoner in the Sessions Court. Where he does not make any statement, and refuses to answer any question, the Court should make a note of this in the records. Where the records did not show the nature of the defence, they were held to be incomplete.—Reference in the case of Gopal Hajjam and others, 15 W. R. 16.

IN a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer, and discharged the prisoner, not considering it necessary that the case should go before a jury. *Held* that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence from the jury.—In re Hurro Shaha, 16 W. R. 20.

AN ACCUSED should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was recalled after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness the High Court quashed the conviction, and ordered a new trial.—Reg. v. Assanoollah, 13 W. R. 15; 6 B. L. R. 693. Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence in allusion to the evidence of the witness, the High Court refused to set aside the conviction.—Reg. v. Sham Kishore Haldar, 13 W. R. 36.

WITNESSES summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right; and, *à fortiori*, if such a witness is called and examined by the Court under Act I. of 1872, s. 165, the prisoner should be allowed to cross-examine.—In the matter of the Empress v. Girish Chandra Taluqdar, I. L. R., 5 Cal. 614. But the Bombay High Court has held that a Sessions Judge ought, if requested, to allow witnesses who have been examined before the committing Magistrate, but whom the Public Prosecutor has thought it unnecessary to call before the Sessions Court, to be cross-examined, but his refusal to do so is not an error of law.—Reg. v. Fattechand Vastachand, 5 Bom. H. C. Rep., Cr. Ca., 85.

It is *prima facie* the duty of the prosecution to call all the witnesses who prove their connection with the transactions connected with the prosecution, and who must be able to give important information. If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution. The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn against an accused. The only legitimate object of a prosecution is, not to secure a conviction, but to see that justice is done. The prosecutor is not therefore free to choose how much evidence he will bring before the Court.—Empress v. Dhuunoo Kazi and another, I. L. R., 8 Cal. 121.

Summing-up.—Whether or not a private complainant is permitted, under s. 495, to conduct a case as prosecutor, he may instruct Counsel, who shall be entitled to appear, under No. 7, Chapter XI. of the Bombay High Court Rules, and the Public Prosecutor may, thereupon, avail himself of the Counsel's services under s. 493. The effect of s. 270 of the Code, read with ss. 493 and 495, is to make every case tried by the Court of Session a case falling within the provisions of s. 493, that is to say, the Public Prosecutor may always avail himself of the services of Counsel retained by a private individual, and in so doing he does not deprive himself of the management of the case. Where the assistance of Counsel has once been accepted, that assistance is not excluded at the stages of the trial (summing-up by prosecutor and his reply).—*In re* Narayan M. Pendshi, 11 Bom. H. C. Rep. 102.

Act X., 1872, s. 251, para. 3. **290.** The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

A WRITTEN defence is not prohibited by law, and should therefore be received, if presented.—2 Agra 356.

Act X., 1872, s. 363. **291.** The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Act X., 1875, s. 85. Right of accused as to examination and summoning of witnesses.

Act IV., 1877, s. 91.

A MAGISTRATE is bound to take steps to procure the attendance of all the witnesses mentioned by the accused in the list delivered to the Magistrate by whom he was committed. Where a witness called by one of the parties is a competent witness, the opposite party has a right to cross-examine him, though the party calling him has declined to put a single question. Where a witness summoned by the defence is absent, the Sessions Judge is bound, especially if the witness be a material witness, to adjourn the case for his attendance.—Reg. v. Ishan Dutt and others, 15 W. R. 34; 6 B. L. R. App. 88.

292. If the accused, or any of the accused, has stated, when asked
Prosecutor's right of reply. under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.
 Act X., 1872, s. 252.
 Act X., 1875, s. 63.

293. Whenever the Court thinks that the jury or assessors should
View by jury or assessors. view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.
 Act X., 1872, s. 253.
 Act X., 1875, s. 64.
 Taken from Livingston, Art. 357.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

If a Sessions Judge should think it necessary to visit the place of the alleged occurrence of an offence under trial, he should give notice to the parties and the assessors. He should not go without such notice, and after the trial has been completed by delivery of the opinion of the assessors.—Oudh Beharynarin Singh, Appellant, 1 Cal. Law Rep. 143.

IN CASES of view by assessors of the scene of the alleged offence, it was held that the Judge could not delegate his own function, of examining witnesses on the spot, to the assessors, who cannot, under this section, speak to, or communicate with, any other person than the officer appointed to conduct them to the place.—Reg. v. Chutterdharee Singh, 5 W. R. 59.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge
When juror or assessor may be examined. that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined in the same manner as any other witness.
 Act X., 1872, s. 253.
 Act X., 1875, s. 69.

A PERSON having to exercise judicial functions may give evidence in a case pending before him when such evidence can and must be submitted to the independent judgment of other persons exercising similar judicial functions sitting with him at the same time. A Sessions Judge is a competent witness, and the giving of evidence by him does not preclude him from dealing judicially with the evidence of which his own forms a part. A prisoner has a right to ask to have the evidence of a Sessions Judge who is trying him taken on a point which he thinks makes in his favour. A Sessions Judge who makes a complaint before a Magistrate is not incompetent afterwards to try it without the aid of a jury, if he has no personal or pecuniary interest in the subject of the charge.—Reg. v. Mookta Singh, 13 W. R. 60; 4 B. L. R. 15.

295. If a trial is adjourned, the jury or assessors shall attend at
Jury or assessors to attend at adjourned sitting. the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.
 Act X., 1872, s. 260.
 Act X., 1875, s. 67.

WHERE a witness summoned by the defence is absent, it is the duty of the Sessions Judge, if the accused so desires, to adjourn the case, especially if the person absent is a material witness.—Reg. v. Ishan Dutt and others, 15 W. R. 34; 6 B. L. R. App. 88.

- Act X., 1875,
s. 65. **296.** The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

Looking-up jury.

F.—Conclusion of Trial in cases tried by Jury.

- Act X., 1872,
s. 255, para.
1. **297.** In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.
- Act X., 1875,
s. 90. Charge to jury.

THE Judge's charge to the jury should not include any question as to recommending a prisoner to mercy. That question should be left entirely to the jury.—Reg. v. Dassee Mosulmany, 14 W. R. 46.

WHERE there is no evidence against a prisoner, the Judge ought to charge the jury for an acquittal, and not leave the jury to say whether the prisoner is guilty or not.—Reg. v. Greedhary Manjee, 7 W. R. 39.

WHERE the provisions of this section are neglected, and the Judge practically does not sum up the evidence at all to the jury, but decides the case himself, a new trial will be ordered.—Reg. v. Shumshere Beg, 9 W. R. 51.

IN charging a jury, a Judge is not bound to do more than lay carefully and plainly before them the evidence as recorded by him, and point out generally the way in which it is favourable to accused.—Reg. v. Chunder Kumar Mozoomdar, 25 W. R. 54.

IT is the duty of the Judge to state to the jury what are the principal points in the evidence, and how they bear for or against the prisoner—in short, to render the jury every assistance in his power towards coming to a right conclusion.—Reg. v. Bolakee Koorniee, 6 W. R. 72.

IN CHARGING a jury, a Sessions Judge should not tell them that the prisoners had previously been bad characters. That fact might be taken into consideration by a Sessions Judge in passing sentence when the prisoners are convicted.—Reg. v. Kulum Sheikh and others, 10 W. R. 39.

A JURY may be satisfied with a minimum of proof, and it is beyond the power of the High Court in such cases to interfere with its verdict; but when there is nothing which can, if believed, amount to proof, the case should not be put to the jury at all, as the verdict of guilty cannot, under such circumstances, be sustained.—Reg. v. Rutton Dass and Doorga Dass, 16 W. R. 19.

IT is not necessary that the Judge's direction to the jury should be reduced to writing before delivery; but it is essential that it should represent with absolute accuracy the substance of the charge, and be such as to enable the High Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.—Cal. H. Ct. Cir. Memo., No. 2 of March 4, 1875; 23 W. R. 7, Rules, &c.; Wilkins, p. 114.

WHERE a Judge, in his charge to the jury, admitted, as receivable, a hearsay statement against the accused, and also an anonymous letter which was put in without an attempt to show how or by whom it was sent, it was held that the jury had been misdirected, and the accused prejudiced. The High Court on this, not being able to say positively, on a perusal of the evidence, that the accused was innocent, did not dispose of the case, but ordered a new trial.—Reg. v. Chunder Coomer Mozoomdar, 24 W. R. 77.

A Sessions Judge in his charge to the jury told them that, in his judgment, the accused was, at the time of his trial, exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time he committed the offence. *Held* that the issue as to whether the accused was of unsound mind at the time of the trial, and incapable of properly making his defence, was a preliminary issue to that put by the Sessions Judge, and should have been first submitted to the jury.—*Reg. v. Doorjodhun Shamonto alias Deejobor*, 19 W. R. 26.

WHERE a summing up of a Judge points out to the jury the principal features of the evidence as regards both the case of the Crown and the defence of the prisoner, the requisites of this section are complied with. The Judge is not called upon to repeat to the jury every word of every witness. He must use an intelligent discretion as to how he ought to put the substance of the evidence before the jury, and the High Court will not interfere with the result of the trial, unless it sees that the Judge has manifestly put the evidence in such a way as was likely to mislead the jury.—*Reg. v. Sheppard*, 13 W. R. 23.

ON a trial by jury, the Sessions Judge, in summing up, should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the jury ought to attach to its several parts. His omission to do so, if the accused is thereby prejudiced, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict. No general rule can, however, be laid down as to when a prisoner is prejudiced by a defective summing up; but, in general, if the finding of a jury in such a case is one that a Court of Appeal would set aside if the trial had taken place with the aid of assessors, the Court will interfere and set aside the verdict. In capital cases, and all cases of a serious or complicated nature, the Judge ought to read over the evidence *in extenso* to the jury.—*Reg. v. Fettechund Vastachund*, 5 Bom. H. C. Rep., Cr. Ca., 85. See also *Reg. v. Sheik Miyavalad Dana*, 6 Bom. H. C. Rep., Cr. Ca., 10; *Reg. v. Mathoor Singh*, 18 W. R. 66.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(a.) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b.) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

THE examination of the accused, properly recorded, is evidence, and should be allowed to go to the jury.—Reg. v. Goshto Lall Dutt, 15 W. R. 68; 7 B. L. R. App. 62.

THE question of proof of previous conviction is one of fact, which ought to go to the jury, and must be determined by a jury.—Reg. v. Esan Chunder Dey, 21 W. R. 40.

THE omission of the Judge to enter into details regarding the identification of stolen property does not amount to a misdirection to the jury.—Reg. v. Madhab Mal and others, 1 W. R. 22.

THE fact of a child's competency to give evidence is in the province of the Judge; what weight is to be attached to the child's evidence is in the province of the jury.—Hosseini, 8 W. R. 60.

THE Judge ought not to introduce into his direction to the jury any question as to recommending a prisoner to mercy, but should leave that entirely to the jury.—Reg. v. Dasseo Musalmani, 14 W. R. 46.

A SESSIONS JUDGE, in summing-up, is bound to advise a jury on questions of fact, and may tell the jury the impression which the evidence has made upon his own mind.—Dwarkanath Sen and another, 13 W. R. 34.

A JUDGE has every right to draw the attention of the jury to anything which appears to be a palpable alteration or blot on the face of a document alleged to be forged.—Reg. v. Kissorsa Mohun Dutt and others, 17 W. R. 58.

THE High Court will set aside the verdict of a jury only in such cases in which, by a misdirection to the jury, the accused has been materially prejudiced, or where there has been a failure of justice.—Reg. v. Raj Koomer Bose, 19 W. R. 71; 10 B. L. R. App. 36.

WHERE different trials are held, at different times and against different prisoners, in respect of the same crime, a new charge, specifying the particulars required by Circular Order No. 5, dated 6th February 1863, should be delivered in each case.—Reg. v. Mohadeo, W. R. Sp. 15.

A JUDGE, in charging the jury, should avoid expressing any decided opinion. All that a charge should contain is a statement of the evidence *pro* and *con* with a running commentary as to its agreement or disagreement with the other facts of the case.—Reg. v. Gunga Bishen and others, 1 W. R. 25.

IN GIVING a warning to a jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points the witnesses made different statements, a Judge exercises a wise discretion, and affords no ground for the objection of misdirection to the jury.—Reg. v. Bustee Khan, 1 W. R. 17.

THE omission of the Sessions Judge to tell the jury that the statement of one prisoner is not evidence against his fellow-prisoner is a material error, and one fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately.—Reg. v. Sheik Miya Valad Daud, 6 Bom. H. C. Rep. 10.

BARE statements of prisoners are not admissible in, and ought not to be alluded to by the Judge as, evidence. Nor is evidence taken before the Magistrate (unless contradictory of the evidence of the same witnesses as given before the Sessions Court) evidence in the trial, or proper to be put to the jury.—Reg. v. Bheekoo Singh and others, 7 W. R. 108.

IN SUMMING up, the evidence for the prosecution should be analysed and explained to the jury: any weakness in the evidence should be pointed out. An omission to so aid the jury in the arrangement of facts spoken to by witnesses, and in directing them on points of law, was held to be an error requiring the conviction to be quashed.—Rangopal Dhur, 10 W. R. 7.

THE omission of a Judge to point out to the jury the weakness of the evidence against the accused, and the possibility of other persons being the guilty parties, does not amount to a positive misdirection. Where there is some evidence to go to a jury, the Court cannot interfere. There must be misdirection or some error in law.—Reg. v. Choonee and others, 5 W. R. 13.

IN reviewing the charge of a Judge to a jury in the mofussil, it is sufficient to see whether the tendency of the charge, taken as a whole, has given a correct or incorrect direction to the mind of the jury, and it is not correct to apply to such charge the criticisms which would be applied to a charge of a Judge in a Court in England.—*Reg. v. Gogalao and others*, 22 W. R. 80 ; 4 B. L. R. App. 50.

THE High Court set aside the verdict of a jury in this case, because the Judge, in his direction to the jury, omitted to point out the absence of evidence very material to the case of the prosecution, and because he directed the jury to attribute an undue importance to the statements or excuses made by the prisoner in the explanation of certain documents.—*Reg. v. Gunga Gobind Palit*, 23 W. R. 21.

THE Sessions Judge should present the evidence on both the sides impartially before the jury, and should not adopt a mere narrative form of charge. It is his duty to present to the jury, as clearly and impartially as he can, a summary of the evidence, and the considerations and inferences to be drawn from the evidence, as they bear both on the negative and affirmative sides of each of the issues.—*Reg. v. Rajkumar Basu*, 10 B. L. R. 21.

WHERE a Sessions Judge, in charging a jury in a case of culpable homicide not amounting to murder, omitted to draw their attention to the two classes of culpable homicide mentioned in s. 304 of the Penal Code, the High Court considered that the accused were found guilty of a lighter description, and sentenced the accused to the punishment for such lighter description.—*Reg. v. Kali Churn Dass and others*, 15 W. R. 17 ; 6 B. L. R. App. 86.

THERE is no misdirection in a case of false evidence on a Judge pointing out to the jury the contrast between the evidence for the prosecution, and the course followed by the prisoner (namely, a simple denial of the charge, coupled with a refusal to examine the witnesses in attendance), so long as the Judge left it to the jury to decide between the opposing statements, and to credit whichever they thought most worthy of belief.—*Reg. v. Seetanath Ghoshal*, 2 W. R. 60.

WHERE a Judge, in his charge to the jury, admitted, as receivable, a hearsay statement against the accused, and also an anonymous letter, which was put in without an attempt to show how or by whom it was sent, it was held that the jury had been misdirected, and the accused prejudiced. The High Court on this, not being able to say positively, on a perusal of the evidence, that the accused was innocent, did not dispose of the case, but ordered a new trial.—*Reg. v. Chunder Coomer Mojoondar*, 24 W. R. 77.

WHEN a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and to leave them to find the facts and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. Where the Judge did not sum up the evidence at all, a new trial was ordered.—*Reg. v. Shumshere Beg*, 9 W. R. 51.

A JUDGE is not bound to try a native Christian with the aid of a Christian jury. The subsequent making away with property by a person originally in lawful possession of the same is not theft, but criminal breach of trust. A Judge, in directing a jury, should confine himself to a general commentary on the evidence, and a statement of the legal offence proved, should such evidence be credited. He should not give a positive opinion as to the guilt or innocence of the accused person.—*Bharat Chunder Christian, Appellant*, 1 W. R. 2.

IN a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence, except that of the medical officer, and discharged the prisoner, not considering it necessary that the case should go before a jury. *Held* that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence from the jury.—*In re Hurro Shaha*, 16 W. R. 20.

S. 133 of the Evidence Act, in unmistakable terms, lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. The rule in s. 114 of the Evidence Act coincides with the rule observed in England, that though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or the Court credits the evidence, a conviction proceeding upon it is not illegal—*Reg. v. Ramasami Padayachi* and another, I. L. R., 1 Mad. 394.

In his charge to the jury, the Sessions Judge omitted to call their attention to the evidence of the witnesses called by the defence. The High Court, after reading the evidence, held that such omission did not amount to a misdirection, and the prisoner was not prejudiced, on the two following grounds: 1st, as the evidence for the defence was very contradictory and unreliable, the Judge would have to point out this fact to the jury; 2nd, as the prisoner was defended by Counsel, points which were not alluded to by the Judge in his charge to the jury must have been made much of by the prisoner's Counsel.—*In re Rochia Mohato*, I. L. R., 7 Cal. 42.

IN CHARGING the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused: *Held* that this amounted to a misdirection; for though Act I. of 1872, s. 54, declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible.—*Roshun Doosadh* and two others *v. The Empress*, I. L. R., 5 Cal. 768.

A CONVICTION founded upon the uncorroborated evidence of one or more accomplices alone is valid in law. The evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require. Improper advice given by the Judge to the jury upon a question of fact, or the omission of the Judge to give that advice which a Judge, in the exercise of a sound judicial discretion, ought to give the jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court, on appeal or revision, in setting aside a verdict of guilty. The power of setting aside convictions, and ordering new trials, for any error or defect in summing-up, will be exercised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby.—*Elahee Buksh*, Appellant, 5 W. R. 80; B. L. R. Sup. Vol. 459 (F.B.).

WHERE a Sessions Judge, in his charge to the jury in a case in which an approver-accomplice gave his evidence, drew the attention of the jury to the necessity for requiring corroboration to approver's evidence before they could convict upon it, and the jury, notwithstanding his charge, convicted upon the uncorroborated evidence of the accomplice, it was held, following a Full Bench case cited, that the High Court could not interfere with such conviction. Where a Sessions Judge omitted in his charge to the jury to comment on different parts of the evidence for the defence, to which he simply alluded as being unimportant, and allowed evidence as to character and hearsay evidence to go to the jury, the High Court acquitted the prisoner, the other evidence in the case being insufficient for conviction. Evidence as to character ought not to be laid before a jury, but should only be taken and considered by the Sessions Judge in awarding punishment.—*Reg. v. Mohima Chunder Dass* and others, 15 W. R. 37; 6 B. L. R. 108.

THE following is an extract from a judgment of the High Court, delivered by Markby, J.: "What a Judge says to a jury upon the law is (as the Officiating Sessions Judge very properly remarked in this case) an absolute and binding direction upon them. What he addresses to them on the facts are only such observations as he thinks it necessary and proper to make in assisting them to arrive at a conclusion upon the evidence which it is wholly in their province to deal with as they think proper, and the observations which a Judge would make to a jury upon the facts would be

determined by circumstances which must vary, one might almost say, in every case and in every tribunal in the country. They would vary in a very great degree according to the intelligence of the jury whom the Judge was addressing; they would also vary very much according as the case had or had not been fully discussed both for and against the prisoners by Counsel previous to his addressing them. Had their been no discussion of a case by Counsel, it would undoubtedly be necessary for the Judge to point out many things which, after the case had been fully discussed on both sides, both for the Crown and the prisoner, might well seem to him unnecessary. And, on the other hand, a Judge has very often to caution a jury against accepting, without careful consideration, some of the suggestions that are made to them. When we are called upon to say whether or not a Judge has done his duty in addressing a jury on the facts, we must look to his summing-up as a whole, and see that the case has been fairly laid before them."—*Reg. v. Nin Chand Mookerjee and another*, 20 W. R. 41.

THE following important remarks were made by Phear, J., in the case of *Reg. v. Sadhu Mundul* (21 W. R. 69): "On the whole, the result appears to be that the Legislature has laid it down as a maxim or rule of evidence resting on human experience that an accomplice is unworthy of credit against an accused person, *i.e.*, so far as his testimony implicates an accused person, unless he is corroborated in material particulars in respect to that person; that it is the duty of the Court, which, in any particular case, has to deal with an accomplice's testimony, to consider whether this maxim applies to exclude that testimony or not; in other words, to consider whether the requisite corroboration is furnished by other evidence or facts proved in the case, though at the same time the Court may rightly, in exceptional cases, notwithstanding the maxim, and in the absence of this corroboration, give credit to the accomplice's testimony against the accused, if it sees good reason for doing so upon grounds other than, so to speak, the personal corroboration. Now, in the case of a trial by jury, it is the function of the jury to ascertain the facts upon the evidence before them, and for that purpose to be guided by the law which is applicable; and it is in all cases the duty of the Judge to point out to them that law. It was therefore, in the present case, the duty of the Judge to lay before the jury, substantially to the effect just set out, the principles relative to the reception of an accomplice's testimony, which the Legislature sanctioned by the Indian Evidence Act; and we think the Judge was wrong in telling the jury that this case was one in which no caution or instruction from him was needed on this head. It is in all cases, where an accomplice's testimony is admitted, incumbent on the Judge to inform the jury of the results of the law bearing on this point, substantially as we have just endeavoured to explain it.—*Sadhu Mundul*, 21 W. R. 69.

Duty of jury.

299. It is the duty of the jury—

Act X., 1872,
s. 237.
Act X., 1875,
s. 93.

(a) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Held by the majority (Jackson, J., dissenting) that a charge framed on the model given in the schedule of the Code of Criminal Procedure, charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193, Penal Code, is a good charge, and that (Phear and Jackson, JJ., dissenting) the Court or jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or jury should find that the allegations made in the charge are proved.—*Reg. v. Mahomed Humayoon Shah*, 21 W. R. 72; 13 B. L. R. 324 (F. B.).

Act X., 1872, **300.** In cases tried by jury, after the Judge has finished his
s. 263, para.
1. charge, the jury may retire to consider their
Act X., 1875, Retirement to consider. verdict.
s. 92.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Act X., 1872, **301.** When the jury have considered their verdict, the foreman
s. 263, para.
1. shall inform the Judge what is their verdict,
Act X., 1875, Delivery of verdict. or what is the verdict of a majority.
s. 94.

Act X., 1872, **302.** If the jury are not unanimous, the Judge may require them
s. 263, para.
3. Procedure where jury to retire for further consideration. After such
Act X., 1875, differ. a period as the Judge considers reasonable,
s. 96. the jury may deliver their verdict, although they are not unanimous.

WHEN a jury are not unanimous, the Judge is not bound to summon a new jury.—*Reg. v. Urjoon Biswas and another*, 1 W. R. 41.

IN A trial for robbery, it is competent to the jury, if they disbelieve the evidence as to the assault (i. e., as to the circumstances of aggravation), to bring in a verdict of guilty of theft.—*Reg. v. Sakhaat Sheikh*, 2 W. R. 13.

THE finding of a jury that, although the accused killed the deceased, the crime was not murder, not because it fell under any of the exceptions allowed by law, but because the accused had no object in killing him, is not a legal finding, and does not amount to a conviction of culpable homicide not amounting to murder, and the Sessions Judge acted very properly in directing the jury to re-consider their verdict.—*Reg. v. Uckoor Ghose*, 1 W. R. 50.

WHERE a Sessions Judge refused to accept the verdict of the jury, acquitting the prisoner on the first count, and finding him guilty on the second, and required them to find the prisoner guilty on the first count, it was held that the Judge had no power to control the jury in this manner, but that he should have recorded the finding on the first count as the verdict in the case, and sentenced the prisoner accordingly.—*Reg. v. Joy Kristo Goossamy*, 7 W. R. 22.

THE accused were charged under s. 149 coupled with s. 325 of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325. *Held* that such verdict was, under s. 238 of the Code of Criminal Procedure, legally sustainable, although that offence did not form the subject of a separate charge. S. 238 enables

a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence. It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law. Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in s. 307 of the Code of Criminal Procedure.—*Government of Bengal v. Mahaddi* and another, 1. L. R., 5 Cal. 871.

303. Unless otherwise ordered by the Court, the jury shall return **Act X., 1872,**

Verdict to be given on each charge.	a verdict on all the charges on which the accused is tried, and the Judge may ask them	s. 263, para. 2.
Judge may question jury.	such questions as are necessary to ascertain what their verdict is.	Act X., 1875, s. 95.

Questions and answers to be recorded.	Such questions, and the answers to them, shall be recorded.	Act X., 1872, s. 263, para. 2, last sentence.
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THE High Court will exercise the powers vested in it by s. 307 only in cases in which it finds the verdict of the jury clearly and undoubtedly wrong.—*Reg. v. Sham Bagdee* and others, 20 W. R. 73; 13 B. L. R. App. 19.

IN a case referred under s. 307 the High Court declined to interfere with a verdict of a jury from which the Sessions Judge disagreed, as the verdict was not clearly and patently wrong and unsustainable on the evidence.—*Reg. v. Huro Manjhee*, Prisoner, 21 W. R. 4; 14 B. L. R. App. 2, S. N.

A JUDGE ought not to put questions to any of the jury as to his reasons for the verdict he has given.—*Reg. v. Meajan Sheikh*, 20 W. R. 50. But see *Reg. v. Sustiram Mundul*, 21 W. R. 1, *infra*, in which it was held that, in order to ascertain what the verdict of the jury really is, the Judge is justified in putting questions.

WHEREVER trial by jury exists, the verdict of the jury must be accepted, unless it is manifestly and certainly wrong. A verdict based on voluntary confessions is just as good as a verdict based on the testimony of credible witness. It is the province of a jury to decide the credibility of witnesses.—*Reg. v. Wazir Mundul* and others, 25 W. R. 25.

Per Garth, C.J., and Prinsep, J. (Markby, J., *contra*).—The rule laid down in *Queen v. Wazir Mundul* (25 W. R. 25) goes too far. Prinsep, J. (Markby, J., *contra*).—The law does not prevent a Sessions Judge from asking a jury regarding the grounds for their verdict, and such a course is desirable in the ends of justice.—*Empress v. Mukhun Kumar*, 1 Cal. Law Rep. 275.

THE Code of Criminal Procedure casts upon the High Court the duty both of Judge and jury; but notwithstanding this difference, which clothes it with greater powers and responsibilities than the superior Courts in England, it will, as far as may be, be guided by the principle of English law, that the verdict of a jury will not be set aside unless it be perverse and patently wrong, or may have been induced by an error of the Judge. In a proper case, however, the High Court will rectify the verdict of a jury.—*Reg. v. Khanderav Bajirav* and 6 others, 1. L. R., 1 Bom. 10.

WHEN the proceedings upon a trial by jury in the mofussil are consistent with a reasonable construction of that part of the Procedure Code where such trial is provided for, the proceedings are good in the absence of any distinct ruling to the contrary, and ought not to be examined by the light of English rules of procedure. The law does not prescribe any specific form in which the jury are to return their finding, and they are at liberty to deliver it in any form which they think fit. If that finding is not exhaustive as to the facts in issue which go to make up the charge or charges, it is competent to the Judge, and is indeed his duty, to put such questions to them as shall elicit a complete finding.—*Reg. v. Hurry Prosad Ganguly* and others, 14 W. R. 59; 8 B. L. R. 557.

THE prisoners were tried under s. 330 of the Penal Code (for voluntarily causing hurt to a girl), and under s. 348 (for wrongfully confining her). Circumstances of aggravation were alleged, as lifting up and using a sword, of lowering the girl into a well, and of pricking her with thorns. The jury in their verdict stated that they believed these allegations, and also the charge of illegal confinement, but they believed that some slaps had been given. The Judge then asked the jury whether they convicted on either, and, if so, which head of charge. They answered that they believed the prisoners had beaten the girl, and that they convicted them under s. 330: *Held* that the question put by the Judge to the jury was a proper one, and not one of law. The conviction was upheld. Such a case is not governed by the rule of the English law as to special verdict.—*Reg. v. Hari Prasad Gangopadhyaya and others*, 8 B. L. R. 557.

THE accused were charged under s. 149 coupled with s. 325 of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325. *Held* that such verdict was, under s. 238 of the Code of Criminal Procedure, legally sustainable, although that offence did not form the subject of a separate charge. S. 238 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence. It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law. Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in s. 307 of the Code of Criminal Procedure.—*Government of Bengal v. Mahaddi and another*, I. L. R., 5 Cal. 871.

IN a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then, in accordance with s. 303, Code of Criminal Procedure, questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury, but as he had recorded the first verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s. 307: *Held* that s. 307 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded, until the last of the questions put by the Sessions Judge to the jury was answered; and as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directed. The following important remarks were made by Phear and Morris, J.J., in the case: "It is only when it is necessary, in order to ascertain what the verdict of the jury really is, that the Judge is justified in putting questions to the jury. Unless a necessity of this kind truly exists, the questions are not justified in law. No doubt, the Legislature thought that it would be very dangerous to give the Sessions Court the power of cross-examining the jury after they had delivered their final verdict, with a view to show that the conclusions at which they had arrived were not logical or inconsistent, or in order to provide materials upon which the Judge might be enabled afterwards to dispute the finality of the verdict. But in this instance it does appear, from the answers which the foreman returned on being asked to give the verdict of the jury on the first charge, that there was at the time some lurking uncertainty in the minds of the jury themselves in regard to their verdict: and we think that this uncertainty in their minds made itself apparent to the Judge, and that therefore, on the whole, the questions which were put by him were rightly put within the discretion vested in him by this section. This being so, there was no verdict delivered, and there could have been no verdict formally recorded until the last of the questions was answered; and it is very clear that, upon the finding of facts which the answers of the jury taken together disclose, the verdict ought to have been a verdict of guilty on the first charge—namely, the charge of murder."—*Reg. v. Sustiram Mundul*, 21 W. R. 1.

304. When by accident or mistake a wrong verdict is delivered, *Now.*

Amending verdict. the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

305. When, in a case tried before a High Court, the jury are *Act X., 1875, ss. 97, 98.*

Verdict in High Court unanimous in their opinion, or when as many as six are of one opinion, and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When, in any such case, the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases. If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

306. When, in a case tried before the Court of Session, the Judge *Act X., 1872, s. 263, para. 4.*

Verdict in Court of Session when to prevail. does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law. *Act XI., 1874, s. 21.*

A COURT is bound to pass some sentence if it records a verdict of guilty, though the sentence may be only nominal.—*Mad. H. C. Pro., Aug. 12, 1869; Weir, p. 37.*

THE COURT should not interfere with the unanimous verdict of a jury unless it be palpably and perversely wrong.—*Empress v. Mahuddin, I. L. R., 5 Cal. 871; Empress v. Behari Lal Bose, 6 Cal. Law Rep. 431.*

A JUDGE is not warranted in passing a merely nominal sentence because he cannot concur in a jury's verdict of guilty. In doing so, he would usurp the functions of the jury. He is bound to pass a sentence adequate to the offence found by the jury to have been committed.—*Mad. H. C. Pro., Nov. 8, 1866; Weir, p. 37.*

307. If, in any such case, the Sessions Judge disagrees with the *Act X., 1872, s. 263, paras. 5 and 6.*

Procedure where Sessions Judge disagrees with verdict. verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that *Act XI., 1874, s. 21.*

he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

THE High Court, acting under s. 307, convicted the accused in this case on the facts, notwithstanding the verdict of acquittal come to by the jury.—*Reg. v. Sidham Sircar*, 20 W. R. 6.

A CONVICTION upon no evidence is wrong in point of law. A Sessions Judge ought to record distinctly whether or not he agrees in the verdict of the jury.—*Reg. v. Chand Bagdee and others*, 7 W. R. 6.

THE High Court will exercise the powers vested in it by s. 307 only in cases in which it finds the verdict of the jury clearly and undoubtedly wrong.—*Reg. v. Sham Bagdee and others*, 20 W. R. 73; 13 B. L. R. App. 19.

WHERE a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in this section.—*Government of Bengal v. Mahaddi and another*, 1. L. R., 5 Cal. 871.

THE dissent referred to in s. 307 must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case to the High Court.—*Imperatrix v. Bhawani bin Panduji and Sakharani Khundoji*, 1. L. R., 2 Bom. 525.

IN A case referred under s. 307 the High Court declined to interfere with a verdict of a jury from which the Sessions Judge disagreed, as the verdict was not clearly and patently wrong and unsustainable on the evidence.—*Reg. v. Huro Manjhee, Prisoner*, 21 W. R. 4; 14 B. L. R. App. 2, S. N.

WHEREVER trial by jury exists, the verdict of the jury must be accepted, unless it is manifestly and certainly wrong. A verdict based on voluntary confessions is just as good as a verdict based on the testimony of credible witnesses. It is the province of a jury to decide the credibility of witnesses.—*Reg. v. Wazir Mundul and others*, 25 W. R. 25.

THE unanimous verdict of a jury should not be set aside unless clearly wrong and unsustainable on the evidence.—*Reg. v. Nobin Chunder Banerjee*, 20 W. R. 70; and 13 B. L. R. 20; *Reg. v. Sham Bagdee*, 20 W. R. 73, and 13 B. L. R. 19; and *Reg. v. Hurro Manji*, 21 W. R. 4; and see *Reg. v. Mussamat Itwarya*, 14 B. L. R., App. 1, where the verdict of the jury was upheld.

WHERE there are reasons sufficient to warrant a jury in disbelieving the witnesses, and in giving the prisoner the benefit of the doubt raised by inconsistencies in that evidence, although another jury might have come to a different conclusion, the High Court will not interfere. It must be shown that the verdict of the jury is certainly unreasonable.—*In re Haree Narain Mukerji*, 2 Cal. Law Rep. 518.

WHERE a case was referred to the High Court under s. 307, notice was given to the accused that the High Court was about to deal with the case, it being considered that, in fairness, such notice should be given that the accused might bring possible objections to the Judge's submission of the case to the High Court. Doubt was expressed whether such notice was required by law.—*Reg. v. Ootam Dhoba*, 19 W. R. 38.

A MAJORITY of the jurors (four out of five) acquitted the prisoner on a charge of attempt to commit rape. The Sessions Judge disagreed with the verdict, and referred the case to the High Court under s. 307, because, in his opinion, the offence charged was proved. The High Court found that the evidence for the prosecution was fully worthy of belief, and consistent with probabilities, and sentenced the prisoner.—*In re Tilukdhari*, 2 Cal. Law Rep. 1.

A Sessions Judge may, under s. 307, submit to the High Court a case in which he disagrees with the jury in their finding of facts, as well as a case in which he complains that the jury has not followed his directions as to the law : and the High Court, in a case submitted under that section, may acquit the prisoner, if it so thinks fit, on the facts, notwithstanding that the jury has found the prisoner guilty.—*Reg. v. Koonjo Leth and others*, 20 W. R. 1 ; 11 B. L. R. 14.

THE third clause of s. 307 has been framed in recognition of the following ruling : Where the jury acquitted the prisoners on the charges framed, but found certain facts which amounted to another offence, and omitted to convict the prisoners of that offence, as provided by s. 238, it was held that the High Court could, on the case coming before them under s. 307, find the prisoners guilty of such offence.—*Empress v. Hari Mirda and Umed Sirdar*, I. L. R., 3. Cal. 189.

WHERE a jury are not unanimous in their finding, and the Judge dissents from the opinion expressed by them, on the case being referred under s. 307, the High Court is competent to find the prisoner guilty, notwithstanding an acquittal by the majority of the jury. It is the duty of a Judge in sending up a case to the High Court, when he disagrees with a verdict of acquittal, to state the offence which, in his opinion, has been committed.—*Empress v. Sahai Rai*, I. L. R., 3 Cal. 623.

IN DEALING with a reference made by a Sessions Judge under s. 307, in consequence of his disagreeing from the verdict of the jury, the High Court must deal with it as an appeal by the prosecution, and has authority to convict the accused person on the facts, and to pass sentence accordingly. The fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 of the Penal Code.—*Reg. v. Nobin Chunder Banerjee*, 20 W. R. 70 ; 13 B. L. R. App. 20.

THE Code of Criminal Procedure casts upon the High Court the duty both of Judge and jury ; but notwithstanding this difference, which clothes it with greater powers and responsibilities than the superior Courts in England, it will, as far as may be, be guided by the principle of English law that the verdict of a jury will not be set aside unless it be perverse and patently wrong, or may have been induced by an error of the Judge. In a proper case, however, the High Court will rectify the verdict of a jury.—*Reg. v. Khanderav Bajirav and 6 others*, I. L. R., 1 Bom. 10.

ACCORDING to s. 24 of the Evidence Act, a confession is inadmissible only if the Court consider it to have been induced by illegal pressure. Where the Sessions Judge did not consider a confession to have been so induced, the High Court, upon a reference under s. 307, held it to have been properly admitted, and, finding it to be full and clear, and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the jury.—*Reg. v. Balvant Pendharkar*, 11 Bom. H. C. Rep. 137.

WHERE a jury found an accused person guilty of murder, but refused to convict him because there had been no eye-witness of his crime, and on a second charge from the Judge refused to find him guilty at all, it was held by the High Court, to whom the case was referred, that the Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived.—*Reg. v. Gokool Kahar*, 25 W. R. 36.

IN A case referred to the High Court under s. 307 because the Sessions Judge differed from the verdict of the jury, the High Court held that it was for the Government, the appellants, who asked for a conviction, to begin and satisfy the Court that there was a case calling upon the prisoner for an answer. The Court, on a consideration of the evidence, set aside the verdict of acquittal come to by a majority of the jury, holding that a confession made by the accused before the Assistant Magistrate was good, such confession, even if obtained by deception, being admissible under s. 29 of the Evidence Act (I. of 1872).—*Reg. v. Ram Churn Ghose*, 20 W. R. 33.

IN A trial by a jury before a Court of Session upon charges, some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority of four to one, returned a verdict of "not guilty" on all the charges. *Held* that it was not competent to the Judge, who disagreed with the verdict, to treat the trial as if he dealt with the latter charges as a trial with the aid of assessors, and, concurring with the minority, to convict and sentence the accused persons. It was the duty of the Judge, in such a case, to have accepted the verdict as one of acquittal, and then to lay his orders in accordance with s. 307.—*Bhothnath Dey and others, Appellants*, 4 Cal. Law Rep. 400.

A PRISONER, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing on that point from the jury, referred the case to the High Court under s. 307. *Held* that, in a case of this kind, the High Court will not interfere without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by the Code. On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to.—*Reg. v. Doorjodhram Shamonto alias Deejohor*, 9 W. R. 45.

ON THE trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under this section; but, by direction of the Local Government under s. 417, an appeal was preferred. *Held* that the appeal was duly made; that the judgment passed by the Court of Session, following the verdict of the jury acquitting the prisoner, is a judgment of acquittal within the meaning of s. 417; and that, there being an acquittal on the charge of murder, the appeal lay.—*Empress v. Jadu Nath Gangopadhyaya*, 1 L. R., 2 Cal. 273.

IN A case in which the accused was charged with murder (s. 302), culpable homicide not amounting to murder (s. 304), and voluntarily causing grievous hurt (s. 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (s. 457). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regards the three original charges, and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under s. 307 of the Code of Criminal Procedure. *Held* that where (as in this case) the Sessions Judge has approved of a verdict on certain charges, and finally acquitted and discharged the accused as to three charges, the High Court cannot, under s. 307, convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges, the High Court presumed that the reason which weighed with the majority of the jury in finding the prisoners guilty on the additional charge must have weighed with the whole jury in finding them not guilty on all the three other charges, and accordingly the Court could not set aside the verdict of the majority on the last count without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts.—*Reg. v. Udaya Changa and others*, 20 W. R. 73.

G.—Re-trial of Accused after Discharge of Jury.

Act X., 1875,
s. 100.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of Trial in Cases tried with Assessors.

309. When, in a case tried with the aid of assessors, the case for Act X., 1872, ss. 255, para. 1, 261, 262. Delivery of opinions of the defence and the prosecutor's reply (if any) assessors. are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

The Judge shall then give judgment, but, in doing so, shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

THE grounds of each assessor's opinion should be distinctly recorded by the Judge.—Reg. v. Mina Nuggerbhatin and Luchun, 3 W. R. 6.

ASSESSORS ought to give the grounds of their opinion, particularly when they differ in opinion from the Judge.—Reg. v. Bushmo Anent, 3 W. R. 21.

IN a trial conducted with the aid of assessors, the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction.—Reg. v. Kala Karsan *et al.*, 6 Bom. H. C. Rep. 55.

THERE is no need to sum up the evidence in a trial with assessors.—Reg. v. Jaga Poly, 11 W. R. 39. But in a long and complicated case there is no reason why the Judge should not sum up to the assessors.—Reg. v. Amiruddin, 7 B. L. R. 63; 15 W. R. 25.

WHEN a Sessions Judge has vacated office before pronouncing judgment, a fresh trial must be held. Even the consent of the prisoner will not legalize a judgment pronounced by a Judge on proceedings held by his predecessor in office.—Rughonath Dass, 23 W. R. 59.

IN No. 462, dated 9th March, 1869, H. C. Madras, they observe that the opinion of the assessors was not recorded in writing as required by this section. The Sessions Judge stated that as no evidence was offered, there was no question to be put to the assessors. The proper course would have been to have called upon the prisoner to plead to the charge, and, on the plea of "not guilty" being recorded, and the Public Prosecutor not being able to offer evidence in support of the charge, to have instructed the assessors that they were bound to find the prisoner "not guilty."—4 Mad. Jur. 158.

IN RECORDING in writing the opinion of each assessor as required by this section, the Sessions Judge should not merely put in his judgment that he concurs with, or differs from, the assessors, but should separately record an opinion of each assessor, and should invite and encourage each assessor to make that opinion more than a bare expression for or against the prisoner, but an opinion on the case, stating the view that the assessors take of the facts, and the consideration (in brief) on which his opinion is founded.—Reg. v. Mussamut Mina Nuggerbhatin, &c., 4 R. J. P. J. 422, May 1, 1865.

THE intention of the Legislature in a case like this, in which the accused was tried on two charges, was that the assessors should give a definite opinion whether the prisoner is guilty of either of the offences charged, and, if so, of which of the charges preferred against him, and that the Judge, in delivering judgment, should give it with advertence to the opinion of the assessors. In this case, where the opinions of the assessors recorded did not go to the guilt of the prisoner on the charges alleged against him, the High Court ordered the proceedings to be reopened that the assessors might give their opinions as required by the Code.—Reg. v. Matam Mul, 22 W. R. 34.

IN a case of several prisoners, who were tried by a Sessions Court, consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however, postponed giving judgment, and left the district

without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners : *Held* that the conviction was not valid, and the trial had not been completed. The High Court accordingly set aside the conviction, and ordered the re-trial of the prisoners upon the charges upon which they were committed for trial.—Reg. v. Gopi Noshyo and others, 21 W. R. 47.

I.—Procedure in Case of Previous Conviction.

New.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309, shall be modified as follows :—

(a) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(b) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(c) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly ; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Act X., 1875, s. 39. **311.** In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter.

Act X., 1875, s. 41. Those persons whose names are entered in the jurors' book, as exemption of special jurors. being liable to serve on special juries only, shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Act X., 1875, s. 40. **312.** The names of not more than two hundred persons shall, at any one time, be entered in the special jurors' list.

Act X., 1875, s. 42. **313.** The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

- (a) a list of all persons liable to serve as common jurors ; and
- (b) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character, and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor-General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

The Clerk of the Crown shall, subject to such rules as aforesaid, Act X., 1875, s. 43. have full discretion to prepare the said lists as Discretion of officer preparing lists. seems to him to be proper, and there shall be no appeal from, or review of, his decision.

314. Preliminary lists of persons liable to serve as common jurors Act X., 1875, s. 44. and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

315. Out of the persons named in the revised lists aforesaid, there Act X., 1875, s. 45. shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months, unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, Supplementary summons. such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

316. Whenever a High Court has given notice of its intention to Act X., 1875, s. 50. hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

317. In addition to the persons so summoned as jurors, the said Act X., 1875, s. 51. Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles

of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries, notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Act X., 1875,
s. 46.

318. Any person summoned under section 315, section 316, or section 317, who, without lawful excuse, fails to attend, attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable, by order of the Judge, to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Act X., 1872,
s. 404.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside.

Act X., 1872,
ss. 405, 406,
para. 1.

320. The following persons are exempt from liability to serve as jurors or assessors, namely:—

- (a) Officers in civil employ superior in rank to a District Magistrate;
- (b) Judges;
- (c) Commissioners and Collectors of Revenue or Customs;
- (d) Persons engaged in the Preventive Service in the Customs Department;
- (e) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;
- (f) Persons actually officiating as priests or ministers of their respective religions;
- (g) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;
- (h) Surgeons and others who openly and constantly practise the medical profession;
- (i) Persons employed in the Post-office and Telegraph Departments;
- (j) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641;
- (k) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

321. The Sessions Judge, and the Collector of the District or such Act X., 1872,

List of jurors and assessors. other officer as the Local Government appoints s. 400.
in his behalf, shall prepare and make out, in alphabetical order, a list of persons liable to serve as jurors or assessors, and qualified, in the judgment of the Sessions Judge and Collector or other officer as aforesaid, to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (h), both inclusive.

The list shall contain the name, place of abode, and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

322. Copies of such list shall be stuck up in the office of the Col- Act X., 1872,

Publication of list. lector or other officer as aforesaid, and in the s. 401, para. 1.
Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

323 To every such copy shall be subjoined a notice stating that Act X., 1872,

Objections to list. objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice. s. 401, para. 2.

324. For the hearing of such objections, the Sessions Judge shall Act X., 1872,

Revision of list. sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service. s. 402.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid, in preparing and revising the list, shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

325. The list so prepared and revised shall Act X., 1872,
Annual revision of list. be again revised once in every year. s. 403.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

326. The Sessions Judge shall ordinarily, three days at least before Act X., 1872,

District Magistrate to summon jurors and assessors. the day which he may, from time to time, fix for holding the sessions, send a letter to the District Magistrate, requesting him to summon as many persons named in the said revised list as seem to the Sessions s. 403.

Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Act X., 1872, **327.** The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever, for other reasons, such direction is found to be necessary.
s. 410. Power to summon another set of jurors or assessors.

Act X., 1872, **328.** Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.
s. 409, para. 1. Form and service of summons.

Act X., 1872, **329.** Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.
s. 411. When Government or Railway servant may be excused.

Act X., 1872, **330.** The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.
s. 412. Court may excuse attendance of juror or assessor.

Act X., 1872, **331.** At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.
s. 413. List of jurors and assessors attending.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Act X., 1872, **332.** Any person summoned to attend as a juror or as an assessor, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.
s. 414. Penalty for non-attendance of juror or assessor.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

THE order of a Sessions Judge fining a juror or assessor for non-attendance is not appealable, nor liable to be interfered with by the High Court. But where such juror or assessor offers sufficient excuse, the Judge should re-consider his order.—Gour Suran Dass, Petitioner, 8 W. R. 83.

L.—Special Provisions for High Courts.

333. At any stage of any trial before a High Court under this Act X., 1875, s. 146.
Power of Advocate-General to stay prosecution. Code before the return of the verdict, the Advocate-General may, if he thinks fit, inform *Of. s. 259, supra.* the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal, unless the presiding Judge otherwise directs.

334. For the exercise of its original criminal jurisdiction, every Act X., 1875, s. 4.
 High Court shall hold sittings on such days, and at such convenient intervals, as the Chief Justice of such Court from time to time appoints.

335. The High Court shall hold its sittings at the place at which Act X., 1875, s. 5.
 it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section Act X., 1875, s. 27.
Place of trial of European British subjects. 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. In the case of any offence triable exclusively by the Court of Act X., 1872, s. 317.
Tender of pardon to accomplice. Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly

concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender, and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

CONVICTION and sentence set aside (Glover, J., dissenting) as to two of the prisoners, on the ground that there was a misdirection to the jury, because the Judge, in summing up, omitted to advise the jury not to convict upon the uncorroborated evidence of an approver, and because he treated as corroborative that which was no corroboration in law.—Reg. Nawab Jan and others, 8 W. R. 19.

THE evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration. The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others.—Reg. v. Malapa bin Kapana and others, 11 Bom. H. C. Rep. 196.

It is not competent to a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted under this section. Evidence given by such a person who had received a pardon in the case of an offence not exclusively triable by the Court of Sessions was held not relevant; that person not having been acquitted, or discharged, or convicted.—Reg. v. Hanmanta, and appeal by the Government against the acquittal of Hanmanta and others, 1 L. R., 1 Bom. 610.

THERE is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence, being afterwards admitted as a witness for the prosecution. It is not necessary that he should have been acquitted before he is called as a witness, because this is not possible, he not having been committed for trial; nor could an offer of pardon be made to him, as he would probably reject it.—Reg. v. Behary Lall Bose, 7 W. R. 44.

WHERE a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences none of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case: Held that the tender of pardon to such person not being warranted by this section, he could not legally be examined on oath, and his evidence was inadmissible; and that the statement made by such person was irrelevant and inadmissible as a confession.—Empress v. Ashgar Ali, 1 L. R., 2 All. 260.

THE following is the procedure to be observed when making a tender of conditional pardon: The conditions should clearly be explained to the prisoner. It is then for him to accept or refuse. If he refuses, the trial is to proceed as if no tender had been made; if he accepts, he should be examined as a witness; but if, after he is so examined, the Court considers that he has not complied with the conditions, he may be committed for trial on the charge in respect of which the tender was made.—Reg. v. Gogulao, 12 W. R. 80.

S. 133 of the Evidence Act, in unmistakable terms, lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. The rule in s. 114 of the Evidence Act coincides with the rule observed in England, that though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or the Court credits the evidence, a conviction proceeding upon it is not illegal.—Reg. v. Ramasami Padayachi and another, 1 L. R., 1 Mad. 394.

IN A case of murder, it was held that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoner; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplice to point out any independent evidence proving facts showing that the prisoners were or must have been present at, or cognizant of, the murder.—Reg. v. Karoo and others, 6 W. R. 44.

IN A case in which the principal evidence against the accused is the evidence of an approver, the Sessions Judge should carefully warn the jury of the infirmity which attaches that evidence, and he should also tell them (if the act be so) that the approver is speaking under the influence of any offer of conditional pardon. The corroboration of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does. Evidence of character and previous conduct of a prisoner, being matters of prejudice, and not direct evidence of facts relevant to the charge against the prisoner, ought not to be allowed to go to the jury.—Reg. v. Bykunt Nath Banerjee, 10 W. R. 17; 3 B. L. R. 2, Note (F. B.).

NORMAN, J., in laying down the amount of corroborative evidence necessary to support the evidence of approvers, made the following important observations: "It is sufficient if the evidence is confirmatory of some of the leading circumstances of the story of the approvers as against the particular prisoner, so that the Court may be able to presume that they have told the truth as to the rest. The true rule on the subject of the corroboration of the evidence of approvers probably is, that if the Court is satisfied that the witness is speaking the truth in some material part of his testimony, in which it is seen that he is confirmed by unimpeachable evidence, there may be just ground for believing that he also speaks the truth in other parts as to which there may be no confirmation.—Reg. v. Kalachand Dass, 11 W. R. 21.

THE corroboration which is needed in order to make the testimony of an approver-witness trustworthy should be corroboration derived from evidence which is independent of accomplices, and not vitiated by the accomplice-character of the witness, and further should be such as to support that portion of the accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed, and participated in the acts of commission. The statement must not merely be generally true, but true in the particular points which affect the persons accused. Under s. 30 of the Evidence Act, the statement of fact made by a prisoner, which amounts to a confession of guilt on his part, may be taken into consideration so far, and so far only, as that particular statement of fact itself extends, against the other prisoners who are being tried, as well as himself, for the offence which it thus confessed.—Reg. v. Mohesh Biswas and others, 19 W. R. 16; 10 B. L. R. 455, S. N.

A CONVICTION founded upon the uncorroborated evidence of one or more accomplices alone is valid in law. The evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require. Improper advice given by the Judge to the jury upon a question of fact, or the omission of the Judge to give that advice which a Judge, in the exercise of a sound judicial discretion, ought to give the jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court, on appeal or revision, in setting aside a verdict of guilty. The power of setting aside convictions and ordering new trials, for any error or defect in summing up, will be exercised by the High Court only when the Court is satisfied that the

accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby.—*Elahee Buksh*, Appellant, 5 W. R. 80; B. L. R. Sup. Vol. 459 (F. B.).

ON A consideration of s. 114 of the Indian Evidence Act it was held that the Legislature intended to lay down as a maxim or rule of evidence that the testimony of an accomplice is unworthy of credit, so far as it implicates, an accused person, unless it is corroborated in material particulars in respect to that person; and it is the duty of a Court which has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not, and, in a case tried by jury, to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony. A Judge should charge the jury that the mere confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very careful manner made operative as evidence by Act I. of 1872, s. 30, are only to be rated as evidence of a defective character, and that they require specially careful scrutiny before they can be safely relied on.—*Reg. v. Sadhu Mundul*, 21 W. R. 69.

Act X., 1872, **338.** At any time after commitment, but before judgment is passed,
s. 348, omit- Power to direct tender of the Court to which the commitment is made
ting "as a pardon.
Court of Re- may, with the view of obtaining on the trial
vision." the evidence of any person supposed to have been directly or indirectly
Act X., 1875, concerned in, or privy to, any such offence, tender, or order the committing
s. 77. Magistrate or the District Magistrate to tender, a pardon on the
same condition to such person.

A SESSIONS Judge is not competent, before trial, to instruct a Magistrate to tender a pardon.—*In re Nistarinee Debia*, 7 W. R. 114.

If any Magistrate, not empowered by law, erroneously in good faith tenders a pardon under s. 337 or s. 338, his proceedings shall not be set aside merely on the ground of his not being so empowered.—S. 539, cl. g, *infra*.

Act X., 1872, **339.** Where a pardon has been tendered under section 337 or sec-
s. 349. tion 338, and any person who has accepted such
Act X., 1875, Commitment of person to tender has, either by wilfully concealing any-
s. 78. whom pardon has been ten- thing essential, or by giving false evidence, not
Act IV., 1877, dered. thing essential, or by giving false evidence, not
s. 151. complied with the condition on which the tender was made, he may be
7 Cal. 66. tried for the offence in respect of which the pardon was so tendered, or
for any other offence of which he appears to have been guilty in connec-
tion with the same matter.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him, when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

A PERSON accused of an offence was offered a pardon, the conditions of which he accepted. On being examined, he stated in detail the circumstances of the offence, and named the prisoner as an accomplice. He afterwards retracted his statement. Held that the statement could not be used as evidence against the prisoner.—*Reg. v. Hardewar*, 5 N. W. P. 217.

WHERE a person to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered, the Sessions Judge, in exercising the power given him by this section, ought not to try him along with prisoners in whose case he has already given testimony.—*Reg. v. Petumber Dhoobe*, 14 W. R. 10.

THERE is a grave doubt whether the deposition of an approver, taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. Where a conditional pardon, granted to an approver, is withdrawn by the Sessions Court, the Judge ought to wait till the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver.—*In re Joyudee Paramanick and others*, 7 Cal. Law Rep. 66.

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Act X., 1872, s. 186, paras. 1 and 2.

Act XI., 1874, s. 13.

Act X., 1875, s. 31.

Act IV., 1877, s. 130.

WITH the permission of the presiding Judge, any advocate or pleader may address the Court in English, when any one of the pleaders on the opposite side is acquainted with that language, or whenever the senior of such pleader consents.—Cal. H. Ct. Cir. 4, March 15, 1869; 2 B. L. R., 6, Rules, &c.; 4 All. Mis. 1, Cir. 1, 1868.

341. If the accused, though not insane, can not be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Act X., 1872, s. 186, para. 3.

Act X., 1875, s. 130.

Act IV., 1877, s. 131.

WHEN a deaf or dumb person is placed on his trial, some means of communicating with him should be adopted.—*Mad. H. C. Pro.*, May 27, 1870; *Weir*, p. 42.

No sentence can be passed under s. 341 if the Magistrate is uncertain that the accused has understood the proceedings against him.—*Mad. H. C. Pro.*, Nov. 18, 1875; *Weir*, p. 42.

PROCEEDINGS taken in conducting the trial of a deaf or dumb person without making any attempt to communicate with him are clearly wrong.—*Mad. H. C. Pro.*, Dec. 5, 1870; *Weir*, p. 42.

BEFORE reporting the circumstances of the case to the High Court, s. 341 requires the Court to proceed to the end of the enquiry or trial.—*Mad. H. C. Pro.*, April 22, 1873; *Weir*, p. 42.

A PRISONER, who had been deaf and dumb from his infancy, was charged with criminal misappropriation. Under s. 341 the proceedings were referred to the High Court for orders. The High Court, being of opinion "that the prisoner was silly, and was probably attracted by the bright ornament, which, with a sort of magpie instinct, he stole and hid," directed, under the circumstances, that he be admonished and discharged.—*Dwarkanath Halder v. Noder Chand Kamtee*, 22 W. R. 35.

IN the case of an accused person who was deaf and dumb, the Deputy Magistrate who tried and convicted him considered that he did not understand the proceedings, and accordingly referred the case to the Magistrate under s. 341. The Magistrate considered that the accused did understand what he was charged with. *Held* that the finding of the Magistrate must prevail, and s. 341 did not apply. Acting under s. 439, the High Court annulled the order of the Deputy Magistrate, and, as the accused had been previously convicted of an offence under ch. xvii. of the Penal Code, punishable with three years' rigorous imprisonment, ordered that he should be committed for trial to the Sessions Court.—*Dubri Hulwai v. A Dumb Person* (name unknown), 19 W. R. 37.

IN a case in which certain prisoners were tried and convicted by a Court of Session for the offence of house-breaking, one of them was deaf and dumb, and unable to understand the proceedings against him, or to plead to the charge. The Judge, having convicted the prisoner, sent up the proceedings to the High Court.

It was held that the High Court may, under s. 341, in the trial of a person who is deaf and dumb, and who cannot understand the proceedings against him, or plead to the charge, treat the proceedings as amounting to a sufficient trial, and pass sentence upon the prisoner according to the facts which seem to be established in the course, and as the result, of those proceedings. In this case the Court had no doubt that the prisoner was guilty, but before passing final orders it gave the prisoner a further opportunity of being heard, and accordingly directed the Magistrate to give him notice. The prisoner was ultimately convicted and sentenced.—*Reg. v. Bowka Hari*, 22 W. R. 35.

THE provisions of this section do not apply to a person who is of unsound mind; they apply to persons who are unable to understand the proceedings from deafness, or dumbness, or ignorance of the language of the country, or other similar cause. But where the inability to understand the proceedings is due to unsoundness of mind, the procedure provided in Chapter 34 must be followed. Where a Magistrate found that an accused person, convicted of theft, was an imbecile, and consequently unable to understand the proceedings, but that he was not of unsound mind, the High Court held that this distinction was without a difference, and under s. 439 annulled the conviction, and, declaring the accused to be of unsound mind, directed that he should be released on sufficient security being given that he would be properly taken care of, and prevented from doing injury to himself or any other person, and for his appearance when required; and that, in default of such security being given, the case should be reported to Government.—*Empress v. Husen*, I. L. R., 5 Bom. 262.

Act X., 1872, **342.** For the purpose of enabling the accused to explain any cir-
 ss. 193, para. 1, 250, 342. Power to examine the cumstances appearing in the evidence against
Act X., 1875, accused. him, the Court may, at any stage of any inquiry
 s. 61. or trial, without previously warning the accused, put such questions to
Act IV., 1877, him as the Court considers necessary, and shall, for the purpose afore-
 ss. 5, 148. said, question him generally on the case after the witnesses for the pro-
 1 O'Kin. 436. secution have been examined, and before he is called on for his defence.

Act X., 1872, The accused shall not render himself liable to punishment by refus-
 ss. 193, para. 2, 343; see ing to answer such questions, or by giving false answers to them; but
Act I., 1872, the Court and the jury (if any) may draw such inference from such re-
 s. 114, III. fusal or answers as it thinks just.

(h).
Act X., 1872, The answers given by the accused may be taken into consideration,
 s. 193, Ex- in such inquiry or trial, and put in evidence for or against him in any
 ptn. other inquiry into, or trial for, any other offence which such answers
 may tend to show he has committed.

Act X., 1872, No oath shall be administered to the accused.
 s. 345.

THE statements made by an accused person at his trial are to be taken down *in extenso* precisely as made, and, if practicable, in the language in which they are made.—*Mad. H. C. Pro.*, May 13, 1867; *Weir*, p. 43.

THE Judicial Commissioner, Panjáb, has ruled that an accused person making false, irrelevant, and defamatory assertions in his defence, may be prosecuted in the Criminal, or sued in the Civil, Court on account of the same.

A CONVICTION and sentence for criminal breach of trust as a public servant was reversed owing to irregularities in the preliminary enquiries, and irregular procedure as to the examination of the prisoner in the Court of Session.—*Reg. v. Diaz*, 3 Bom. H. C. Rep. 51.

THE discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-criminating statements.—*In re Vira budra Gaud*, 1 Mad. H. C. Rep. 199.

It is improper for the Court to cross-examine a prisoner with the apparent object of convicting him out of his own mouth of false statements, and so making him prejudice himself in respect of the matter with which he is charged.—*Empress v. Behari Lal Bose*, 6 Cal. Law Rep. 431.

A CONFESSION recorded by a Magistrate, who afterwards conducts the enquiry preliminary to committal, and has jurisdiction to do so, is to be treated as an examination under s. 342, and not as a confession recorded under s. 164, notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police-investigation. To such a confession, consequently, the provisions of s. 533 apply.—*Empress v. Anantaram Singh and others*, 1 L. R., 5 Cal. 954 (F. B.) ; 6 Cal. Law Rep. 397.

A COURT may, from time to time, at any stage of the case, examine the accused personally ; but the Court is not competent to subject the accused to severe cross-examination. The discretion given by the law is not to be used for the purpose of driving the accused to make statements incriminating himself, but only for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that these facts should not stand against him unexplained.—*In re Chinibash Ghose*, 1 Cal. Law Rep. 436.

AN ACCUSED should be allowed, at preliminary enquiries before a Magistrate, to cross-examine the witnesses ; but whether the accused himself shall be examined upon the matter of the charge by the Magistrate, is left entirely to the discretion of the Magistrate, and such discretion should not be exercised when the Magistrate thinks that the evidence for the prosecution does not disclose any proper subject of criminal charge against the prisoner.—*Raj. v. Shama Sunkur Biswas and Shama Churn Bose*, 10 W. R. 25 ; 1 B. L. R. 16, S. N.

THE authority given to a Sessions Court to examine an accused does not contemplate the cross-examination of such accused, nor can the Judge endeavour, by a series of searching questions, to force the accused to criminate himself. The real object involved in the power given to the Court under s. 342 is to enable the Judge to ascertain from time to time from the accused (especially if he be undefended) such explanation as he may desire to give regarding any statement made by the witnesses, or, at the close of the case for the prosecution, to elicit from the accused how the proposes to meet such portions of the evidence which, in the opinion of the Court, implicates the accused in the commission of the offence with which he stands charged.—*Hossain Buksh and others v. The Empress*, 1 L. R., 6 Cal. 96 ; 6 Cal. Law Rep. 51.

THE following important remarks were made by the High Court (Kemp and E. Jackson, J.J.) regarding the examination of an accused person : " I have, for some time, felt, from examination of criminal trials, that many Magistrates are too hasty in making commitments, or rather that they do not make the thorough inquiry which, I think, they ought to make previous to commitment. In a case of murder more especially, there can be no doubt that it is the duty of the Magistrate to sift every fact bearing on the case, in order to ascertain whether the accused is guilty or innocent, and to examine the accused on the facts which bear against him. One of the points of the evidence in this case which led to the presumption of the accused's guilt was, that he had been absent about the time the murder was committed. His statement as to where he was at that time should have been recorded, and should also have been thoroughly inquired into. It is not sufficient to say that the accused might bring witnesses to prove his innocence at the trial. It is possible the accused may not know the names of the witnesses ; and if the witnesses can give evidence in his favour to exculpate him, he should not be committed. A long time elapses before a trial at the Sessions comes on, and witnesses cannot then give as clear evidence, more especially as to time and dates, as when the facts have only lately occurred. I think every inquiry should have been made, previous to commitment, to ascertain not only whether there was presumption of the guilt of the accused, but also whether he was innocent. It is the duty of the Police and the Magistrate, not only to bring the parties suspected of being guilty to trial, but also to ascertain whether the suspected parties can clear themselves from the crime of which they are accused. There is a clause in the Procedure Code which empowers Magistrates to commit without inquiry into the defence of the accused. I believe the discretion

given by this clause is much abused. It may be applied in certain cases, but in serious charges of murder, when the life of the accused is at stake, I think this clause should not be acted upon, because no certainty of the accused's guilt can arise until his defence is negatived, and proof that his defence is false is frequently very strong evidence in favour of the prosecution. If the result of the enquiry into the defence leaves the matter in doubt, it is the duty of the Magistrate to commit, and leave the Sessions Court to decide which is the true story."—*Reg. v. Kishto Doba*, 14 W. R. 16.

Act X., 1872, s. 344. **343.** Except as provided in sections 337 and 338, no influence, by
Act IV., 1877, s. 149. No influence to be used means of any promise or threat or otherwise, to induce disclosures. shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Act X., 1872, s. 194, para. 1 and Explan., 208, para. 1, 219, 264. **344.** If, from the absence of a witness or any other reasonable cause, Power to postpone or it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same, on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :
Act IV., 1877, ss. 86, 124, 11 & 12 Vic., c. 42, s. 21. Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

EXPLANATION.—If sufficient evidence has been obtained to raise Reasonable cause for a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

A REMAND cannot be granted in the absence of the prisoner. The meaning of a remand is that a prisoner is brought up and re-committed to custody.—*Mad. H. C. Pro.*, June 10, 1867 ; *Weir*, p. 34.

A MAGISTRATE is not at liberty to retain an accused person in custody, except upon a proper remand made after taking sufficient evidence given on oath or solemn affirmation.—*Zuhurudeen Hossein*, *Petitioner*, 25 W. R. 8.

A MAGISTRATE, having completed the proceedings against a prisoner, should not defer either his judgment or the committal of the prisoner to the Sessions, merely because the principal offenders have not been arrested.—3 W. R. 21, C. L.

IT is not an irregularity to adjourn the trial under s. 344 for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial.—*Revision of proceedings in the case of Dinoo Roy and others*, 16 W. R. 21.

WHERE the accused has not his witnesses in attendance, and does not apply to the Magistrate to summon them, the omission of the Magistrate to require him to produce his witnesses does not prejudice the accused, or amount to an error or defect calling for interference.—*Reg. v. Totaram*, 11 W. R. 15.

THE order of a Magistrate sanctioning the detention by the police of an accused person for an indefinite period is illegal. At the expiration of twenty-four hours from the time of arrest, the accused must be brought before a Magistrate, who can then remand for a period not exceeding fifteen days under this section. No remand without a hearing can last for a longer period.—*Reg. v. Surkya*, 5 Bom. 31.

A PRISONER summoned three witnesses for his defence. Of these, one only appeared, the other two being reported absent from their homes. The Magistrate, in the absence of these two witnesses, heard the case, and convicted the accused. The conviction was quashed, and the Magistrate was directed to re-hear the case after giving the prisoner reasonable time to secure the attendance of his witnesses.—5 Mad. xxvii., App. Pro, July 5, 1870.

IF THE proceedings have been completed against a prisoner, the decision of the case should not be deferred merely because they are *subordinate* prisoners, and because the *principal* offenders have not been apprehended; a trial should be adjourned only when there is a probability of obtaining additional evidence against an accused. If, in another case, a prosecution for giving false evidence has been instituted, proceedings should not be stayed because the original case in which the false evidence was given was on appeal. The order of an Appellate Court could not affect any prosecution for such an offence.—5 R. J. P. J. 100, Aug. 10, 1865; H. C. C. 795 of 1865.

ALTHOUGH an improper adjournment of an enquiry by a Magistrate was scarcely an error in the decision upon a point of law, or involved any question of law justifying the interference of the High Court, such Court, under s. 15 of the Charter Act, set aside the order of the Magistrate adjourning the enquiry, when there was not the absence of a witness or other reasonable cause rendering it necessary or advisable to adjourn the enquiry. "The witness whose absence appears to have been given as a reason for the adjournment was," as Couch, C.J., remarked, "the inspector who made the report. Assuming that, if called, he would have deposed to the facts stated in that report, it appears that all that he would have proved would have been that the will was produced to him and was afterwards returned; and that evidence being taken there really would have been no evidence to justify the detention of the parties upon a charge of forgery of the will. It would really have been just the same as if there had been no evidence whatever against them. The case appears to have been postponed in a manner which could hardly be justified. There was not any evidence taken which could be made the foundation of a charge, and the Magistrate appears to have been influenced in the course which he took by the expectation that, after some time, and by dint of inquiry, some evidence might be obtained. But a Magistrate is not justified in keeping parties under recognizances in the way he did on this occasion.—Muthoora Nath Chuckerbutty and others v. Heera Lall Dass, 17 W. R. 55; 9 B. L. R. 354.

345. The offences punishable under the sections of the Indian Act X., 1872, Penal Code described in the first two columns s. 188. of the Table next following may be compound- Act X., 1875, s. 151. ed by the persons mentioned in the third column of that Table :— Act IV., 1877, s. 133.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ...	447	The person in possession of the property trespassed upon.
House-trespass ...	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery ...	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman ...	498	
Defamation ...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory ...	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter ...	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338, of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot, or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

N CHARGED T with having committed adultery with his wife. On enquiry into the charge by the Magistrate, the case was committed to the Sessions Court for trial, when T was convicted. T appealed to the High Court. After conviction, N and his wife were reconciled, and N, at the hearing of the appeal, asked leave to compound the offence: *Held* that, at that stage of the case, sanction could not be given to withdraw the charge.—*Empress v. Thompson*, 1 L. R., 2 All. 339.

CHEATING and forgery are not offences which may be lawfully compounded. Where a Magistrate decided that certain offences could be legally compounded, having regard to a bill which the Legislature had brought in amending s. 214 of Act XLV. of 1860, *held* that it was irregular for such Magistrate to allow his decision to be guided by anything in a bill that had not become law, and it was his duty to have interpreted that section without reference to merely contemplated legislation.—In the matter of the petition of *Ramnak Husain v. Harbans Singh*, 1 L. R., 3 All. 283.

346. If, in the course of an inquiry or a trial before a Magistrate Act X., 1872,

Procedure of Provincial in any district outside the Presidency-towns, s. 45, paras.
Magistrate in cases which the evidence appears to him to warrant a presumption that the case is one which should be 1 and 2.
he cannot dispose of.

tried or committed for trial by some other Magistrate in such district, he shall stay proceedings, and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

THE Magistrate to whom the case is submitted must not only be one to whom the referring Magistrate is subordinate, but also one who has power to deal with the case.—*Reg. v. Kubeirio Ratno*, 4 Bom. H. C. Rep., Cr. Cal., 8.

A DIVISIONAL Magistrate cannot refer to another Magistrate for disposal a case referred to him by a Subordinate Magistrate under this section, but must deal with it himself.—*Mad. H. C. Pro.*, Nov. 8 and 10, 1870; *Weir*, p. 32.

WHERE a case which has been partly heard by one officer is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it. The High Court, however, declined to interfere in a case of this sort, as the prisoners did not appeal or raise any objection to the trial on this ground.—*Kopil Nath Sahi v. Koneeram and others*, 14 W. R. 3.

A REFERENCE by a Subordinate Magistrate under s. 346 to a District or Divisional Magistrate should be made by a brief report explaining the nature of the case. All the proceedings held by the Subordinate Magistrate should be submitted for the information of his superior, who will nevertheless proceed altogether *de novo*.—*Mad. H. C. Pro.*, Dec. 22, 1864, and May 22, 1865; *Weir*, p. 32.

A MAGISTRATE to whom a case is submitted under this section is bound to pass an independent judgment upon the facts as they may appear to him upon the record, and must not take them as found by the lower Court.—2 *Mad. Jur.* 323; 5 *Mad. H. C. Rep. App.* 43. If, however, the materials for a judgment appear to be insufficient, he may himself call up and examine the witnesses, and, if necessary, take further evidence. The expression, "any Magistrate to whom he is subordinate," means the Magistrate of a district or Magistrate of a division of a district; and a person, therefore, sentenced by a Magistrate to whom the case has been so referred is a person convicted on a trial, and consequently an appeal lies from the sentence

to the Court of Session, provided the sentence is, from its magnitude, appealable.—*Mad. H. C.*, May 20, 1867; 2 *Mad. Jur.* 323. The higher Magistrate is not, however, empowered to forbid his subordinates to take up cases if he thinks before he commences the inquiry he may have to act under this section.—*Reg. v. Guna bin Rag-nak*, 3 *Bom. H. C. Rep.*, Cr. Ca., 29.

Act X., 1872, ss. 46, para. 3, 221, 436, para. 3.
Act IV., 1877, s. 127.
347. If, in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings, and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

A MAGISTRATE to whom a case is referred for enhancement of punishment may order the committal of the case for trial by the Sessions Court.—*In re Chinnimari-gadu*, 1 *L. R.*, 1 *Mad.* 289 (F. B.).

THIS section authorizes a Magistrate, after a charge has been drawn up, to stop further proceedings, and commit for trial. Although s. 258 provides that, if a charge is drawn up, the prisoner must be either convicted or acquitted, it does not require that the conviction or acquittal should be by the Magistrate who drew the charge.—*Empress v. Kudrutulla and others*, 1 *L. R.*, 3 *Cal.* 495; 2 *Cal. Law Rep.* 2.

WHERE bone-fractures have been caused in addition to other injuries, the offence committed is grievous hurt triable by a Court of Session, and not hurt cognizable by a Magistrate. In this case, therefore, the evidence having shown that the offence committed was beyond the Magistrate's jurisdiction, the High Court quashed the conviction for the minor offence, observing that Magistrates are not at liberty to pass over material parts of the evidence in cases before them, and so to withdraw cases from the cognizance of the proper tribunals.—*Reg. v. Ramtahal Singh and another*, 5 *W. R.* 65.

Act X., 1872, s. 315.
Act IV., 1877, s. 123.
348. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

TRIAL of persons previously convicted of offences against coinage, stamp-law, or property.

If it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after.—*Reg. v. Raj-coomer Bose*, 19 *W. R.* 41; 10 *B. L. R. App.* 36.

A SENTENCE of whipping cannot, with reference to Act VI. of 1864, s. 7, be passed on a conviction for theft under s. 379, Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years. The fact of previous conviction should, under s. 221 of the Criminal Procedure Code, be stated in the charge, when it is intended to prove it for the purpose of enhancing punishment. The question of proof of previous conviction is one of fact which ought to go to the jury, and must be determined by a jury.—*Reg. v. Esan Chunder Dey*, 21 *W. R.* 40.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion, and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Act X., 1872,
s. 46, paras.
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serting "dif-
ferent in kind
from or."

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

A MAGISTRATE to whom a case is referred for enhancement of punishment under s. 349 may order the committal of the case for trial by the Sessions Court.—*In re Chinanirigadu*, 1. L. R., 1 Mad. 289 (F. B.).

It is competent for the Magistrate of a district to refer for trial to a Full-power Magistrate a case submitted to such Magistrate of the district by a Subordinate Magistrate.—*Reg. v. Mangla Bhulia et al.*, 7 Bom. II. C. Rep. 69.

WHERE a case is committed to a Magistrate under s. 349, the Magistrate alone has jurisdiction, and cannot commit to the Sessions on the ground that he considers the sentence which he is empowered to inflict is insufficient.—*In re Blichhareo Mullick and others*, 10 W. R. 50.

It is not competent for a Magistrate, to whom a case has been referred under s. 349, to return the case to the referring Magistrate on the ground that in his opinion the latter has power to pass an adequate sentence. All orders passed after a case has been so returned are illegal.—*Dula Faqueer v. Bhagirat Sircar*, 6 Cal. Law Rep. 276.

WHERE the proceedings of an Assistant Magistrate are submitted to the Magistrate, the prisoner has a right to be present at the proceedings before the Magistrate under this section, and to be heard in his defence. Where this was not allowed, the District Magistrate's proceedings were quashed, and he was directed to try the case afresh.—*Reg. v. Gunesh Sircar*, 7 W. R. 38.

In clause 2 of s. 349, the word "order," associated as it is with the words "judgment and sentence," means a final order, *i. e.*, one disposing of a case so far as the Magistrate, to whom a Subordinate Magistrate submits the proceedings of the case for higher punishment, is concerned. It does not deprive that Magistrate of the exercise of his discretion as to its being a proper case for the Sessions, and of the power of committing it for trial.—*Imperatrix v. Abdulla*, 1. L. R., 4 Bom. 240 (F. B.).

WHEN the proceedings in a case tried by a Subordinate Magistrate are submitted to a District Magistrate to pass sentence upon the accused, the accused is entitled to be present at the passing of such sentence before the District Magistrate; because the duties of the Magistrate of the district not being confined to the mere passing of the sentence, but he having power to pass such order in the case as he deems proper, and the Magistrate of the district having power to reverse the conviction and release the prisoner, it follows that the prisoner should always be present to offer to the Magistrate of the district such reasons as he may have against the conviction, or to state his plea (if he has any) for a lenient punishment.—*Reg. v. Raghu Naranji et al.*, 7 Bom. II. C. Rep. 31.

Act X., 1872,
ss. 328, 329.
Act IV., 1877,
s. 156.

350. Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has, and who exercises, such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses, and re-commence the inquiry or trial:

Provided as follows:—

(a.) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(b.) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

THE power given by the Criminal Procedure Code to a Magistrate to pronounce judgment upon evidence partly recorded by his predecessor and partly by himself does not extend to a Sessions Judge.—*Tarada Baladu v. Reg.*, 1 L. R., 3 Mad. 112.

THE provisions of s. 350 only apply when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another, who has, and exercises, jurisdiction in such case.—*Reg. v. Khan Mahomed and another*, 24 W. R. 53.

IN A case under s. 145 of this Code, the High Court set aside the proceedings of a Deputy Magistrate, who, on succeeding his predecessor who had gone into the case, instead of recalling the witnesses *de novo*, and examining them himself, decided the question of possession on the evidence which had been taken by his predecessor.—*Guru Churn Sen, 1st Party, v. Kally Nath Dass Biswas, 2nd Party*, 23 W. R. 62.

IN two cases, in one of which the evidence was taken entirely by one Deputy Magistrate, whilst the decision was passed by another, and in the other of which, although the Deputy Magistrate who decided the case heard part of the evidence, he decided it on the same grounds as the first case, the High Court declined to interfere, because the accused was not said to have been prejudiced by the decision in either case.—*Thakur Dass Manjhi v. Namdar Mundul and others*; *Ujal Mundul v. Namdar Mundul and others*, 24 W. R. 12.

NOTWITHSTANDING the introduction into s. 350 of the words “the accused person” and “conviction,” the provisions of this section apply to an inquiry instituted under s. 107 with a view to enforcing the giving of security against a breach of the peace, and in such a case, where the Magistrate by whom only part of the evidence has been taken is succeeded by another Magistrate while such inquiry is pending, the person called upon to show cause why he should not give security may insist, before the latter, upon the recall and re-examination of the witnesses whose evidence has been already taken by the former Magistrate.—*Baroda Kant Roy v. Korinuddi Moonshee and others*, 4 Cal. Law Rep. 452.

351. Any person attending a Criminal Court, although not under Act X., 1872,
Detention of offenders arrest or upon a summons, may be detained by s. 104.
attending Court. such Court for the purpose of examination, for
any offence of which such Court can take cognizance, and which, from
the evidence, he may appear to have committed; and may be proceeded
against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under
Chapter XVIII., or after a trial has been begun, the proceedings in
respect of such person shall be commenced afresh, and the witnesses
re-heard.

352. The place in which any Criminal Court is held for the purpose Act X., 1872,
of inquiring into or trying any offence shall be s. 187.
Courts to be open. deemed an open Court to which the public Act X., 1875,
generally may have access, so far as the same can conveniently contain s. 150.
them: Act IV., 1877,
s. 132.

Provided that the presiding Judge or Magistrate may, if he thinks
fit, order, at any stage of any inquiry into, or trial of, any particular case,
that the public generally, or any particular person, shall not have access
to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence taken Act X., 1872,
under Chapters XVIII., XX., XXI., XXII., and s. 191, para.
Evidence to be taken in XXIII., shall be taken in the presence of the 1.
presence of accused. Act IV., 1877,
the accused, or, when his personal attendance is dispensed with, in presence s. 83, para.
of his pleader. 1.

A CONVICTION of prisoners in two separate cases upon evidence recorded in
another case, and without taking their defence, was quashed as illegal.—Reg. v.
Bunko Behary and others, 1 W. R. 36.

UPON the trial of a prisoner it is illegal to read over to witnesses their deposi-
tions taken at a former trial, and ask them if they are true.—Reg. v. Kalundar Doss,
Criminal Appeal, Feb. 25, 1870, H. C. N. W. P. R., vol. 2, part 2, p. 100.

WHERE the complainant and witnesses for the prosecution were not examined in
the presence of the accused or his agent, it was held that the proceedings were irregu-
lar, and the commitment was quashed.—Reg. v. Ramdhun Singh, 11 W. R. 22.

IT is necessary that the examination of witnesses should be held *de novo* in the
presence of the subsequently apprehended prisoners in the same case, as if the case
were entirely new, and the witnesses had not been examined before.—Letter No. 613
of 1863, 1 R. J. P. J. 236.

THE accused must be present as an accused person, and must be allowed to
cross-examine the witnesses against him, and to make his defence. It is not suffi-
cient that he should be present as one of a number who depose to certain facts, the
result of such deposing being that the prisoner is committed for trial. If he hap-
pened to be present at first as a witness, it is essential that he should know at what
time he ceased to be a witness and became a defendant, so that he might know when
his rights as an accused person commenced, and might avail himself of them.—
Reg. v. Kalichurn Lahoree, 5 R. C. C. R. 41; 9 W. R. 54.

WHERE a Magistrate took the depositions in a case by reading over to the witnesses depositions taken in another case, at the hearing of which the prisoner was not present, and by procuring them to affirm to the truth of what was read over to them, it was held that the depositions were illegally taken, and could not sustain a charge.—Reg. v. Raj Krishna Mitter, 1 B. L. R. 37 ; Reg. v. Bishonath Pal, 3 B. L. R. 20. But where the evidence of witnesses given on a previous occasion was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court refused to interfere, as the prisoners were not prejudiced by the irregularity.—Purmessur Singh v. Soroop Audhikaree, 13 W. R. 40.

Act X., 1872,
s. 332.

Manner of recording
evidence outside Presi-
dency-towns.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Act X., 1872,
ss. 222, 333.

Record in summons-cases,
and in trials of certain
offences by first and second
class Magistrates.

355. In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (b) to (k), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

A MEMORANDUM by a Judge that certain witnesses had deposed the same as the former witnesses is not in accordance with the requirements of this section.—Reg. v. Muttee Nushyo, W. R. Sp. 18.

A SEPARATE note of each witness's deposition is required to be taken by s. 355, which is not satisfied by a statement that a witness "deposes as last witness."—Reg. v. Byla Valad Surjim and others, 1 Bom. II. C. Rep. 91.

Act X., 1872,
s. 334.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII. and XVIII., the evidence of each witness shall be taken down in writing, in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing, and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

A MEMORANDUM by a Judge, that certain witnesses had deposed the same as the former witnesses, is not in accordance with the requirements of this section.—Reg. v. Muttee Nushyo, W. R. Sp. 18.

WHERE a Magistrate omitted to record the evidence as prescribed by the Code, such omission led to the reversal of a conviction.—Khettro Money Dasi v. Sreenath Sircar and others, 20 W. R. 14; 11 B. L. R. App. 5.

A SEPARATE note of each witness's deposition is required to be taken by this section, which is not satisfied by a statement that a witness "deposes as last witness."—Reg. v. Byha Valad Surjiin and others, 1 Bom. H. C. Rep. 91.

357. The Local Government may direct that in any district or part Act X., 1872
s. 335.

Language of record of of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate Act X., 1872
s. 336.

Option to Magistrate in may, if he thinks fit, take down the evidence of cases under section 355. any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

359. Evidence taken under section 356 or section 357 shall not Act X., 1872
s. 338.

Mode of recording evidence under section 356 or section 357. ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

IT MATTERS not how often the same offence is the subject of a Sessions trial, but every accused person has a right to have the whole of the evidence given and recorded in his presence just as if the witness had never before given his testimony on the charge.—Reg. v. Affazuddin, W. R. Sp. 13.

A MAGISTRATE took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. *Held* that the depositions were illegally taken, and therefore could not sustain a charge.—Reg. v. Rajkrishna Mitter, 1 B. L. R. 36 (O. J.).

WHENEVER a prisoner is put upon his trial, he is entitled to have the witnesses examined *de novo* if they have previously given evidence on the trial of another prisoner in the same case; and it is not sufficient to require the witnesses to identify the prisoner, and to read over to them their former examination, and require them to attest it.—Reg. v. Kanye Sheikh, W. R. Sp. 38.

IN EVERY Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new, and the witnesses had not been examined before. To read to a witness his deposition on a former trial, is not an examination of the witness in the presence of the accused.—Reg. v. Sheikh Kyamut, W. R. Sp. 1.

Act X., 1872,
s. 339.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

THE memorandum required by s. 360 should always be appended to the deposition.—Reg. v. Hossein Sirdar, 13 W. R. 17.

S. 360 relates to the examination of witnesses, and does not apply to the examination of prisoners.—Reg. v. Radhoo Jana and others, 12 W. R. 44; 3 B. L. R. 59.

S. 360 being intended for the protection of witnesses only, the fact that witnesses did not understand their depositions when read over, although they may not have required them at the time to be interpreted, affords no ground for an application by the accused to set aside a conviction.—*In re Okhoy Kumar*, 7 Cal. Law Rep. 393.

WHERE the evidence was taken down by the Magistrate in English, and no memo. was attached to it (as required by s. 360), stating that the evidence was read over to the witness in a language which he understood, it was held that there had been an error in law by which the accused was materially prejudiced.—Reg. v. Issur Rauth and others, 8 W. R. 63.

Act X., 1872,
s. 340.

361. Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader, and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

As to documentary evidence, although a prisoner has a right to have all or any part of any document used on his trial translated or interpreted to him, yet where a document is put in for the purpose of merely giving formal proof of that which is an incontestable fact, it is not necessary to interpret it at length. It would be sufficient if the prisoner was made to understand what the document was, and for what purpose it was used.—Reg. v. Amceruddeen, 15 W. R. 25 ; 7 B. L. R. 63.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate, and shall form part of the record.

Act X., 1872,
s. 335.
Act IV., 1877,
s. 115.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Act X., 1872,
s. 338.
Act IV., 1877,
s. 115.

Sentences passed under section 35, on the same occasion, shall, for the purposes of this section, be considered as one sentence.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Act X., 1872,
s. 341.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or English ; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

Act X., 1872,
s. 346, paras.
1, 2, 3, and 4.
Act IV., 1877,
ss. 84, 123.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is

sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

THE attestation required by s. 364 is unnecessary when a confession is made in Court to the officer trying the case at the time of the trial.—*In re Chumman Shah* and another, I. L. R., 3 Cal. 756; 2 Cal. Law Rep. 317.

AN accused person who refuses to sign a statement made at his trial in answer to questions put by the Court commits no offence punishable under s. 180 of the Penal Code.—*Imperatrix v. Sirsapa*, I. L. R., 4 Bom. 15.

THE omission of a Magistrate to have recorded in the vernacular the questions asked in the examination of the accused person does not necessarily render that examination admissible as evidence.—*Titu Mya*, Appellant, 1 Cal. Law Rep. 1 (F.B.).

THE High Court, in pointing out the importance of properly recording and attesting the confessions of prisoners, observed that what the law required was the affixing, not of an illegible initial to what purports to be the statement of the accused, but the signature of the attesting officer.—*Reg. v. Bhikaree*, 15 W. R. 63.

WHEN the confession of a prisoner under ss. 122 and 164 was not taken in the manner provided by s. 364, and was, therefore, defective: it was held that the evidence of the recording officer, that such confession was actually made, was inadmissible to remedy the defect.—*In re Empress v. Mannoo Tamoollee*, I. L. R., 4 Cal. 696.

A DETAILED confession made by an accused before a Magistrate, but retracted on the examination being read over to him, does not amount to a confession, although the plea for retracting the confession, viz., ill-treatment of the accused by the police, may be inquired into and found to be untrue.—*Reg. v. Garbad Bechar*, 9 Bom. II. C. Rep. 344.

THE certificate required under s. 364 need not be in the handwriting of the presiding officer, but may be under his hand only, i.e., signed by him. Where a jury is not satisfied as to the genuineness of an attestation by a Magistrate, it is necessary to call the Magistrate to swear to his signature.—*Reg. v. Rezza Hossein* and others, 8 W. R. 55.

IN RECORDING the examination of accused persons under s. 364 in the language in which it is given, a Magistrate need not take down the examination in his own hand; it is enough that he append a certificate that the examination was conducted in his presence, and contains accurately all that was stated by the accused person.—*Reg. v. Luckhy Narain Dutt*, 20 W. R. 50.

A PERSON accused of an offence was offered a pardon, the conditions of which he accepted. On being examined, he stated in detail the circumstances of the offence, and named the prisoner as an accomplice. He afterwards retracted his statement. Held that the statement could not be used as evidence against the prisoner.—*Reg. v. Hardewar*, 5 N. W. P. 217.

A CONFESSION recorded under s. 164, to be admissible in evidence, must not only bear a memorandum that the Magistrate believed it to have been voluntarily made, but also a certificate under s. 364, that it was taken in the Magistrate's presence and hearing, and contains accurately the whole of the statement made by the accused person.—*Reg. v. Shiva*, son of Bhagowa, and three others, I. L. R., 1 Bom. 219.

THE prisoner retracted his statement when read over to him, and said that he was compelled to make it. The Judge, without making any enquiry or taking any evidence on the point, submitted the prisoner's statement to the jury as a confession.

Held that the Judge was wrong in so doing, and that he should rather have charged the jury not to accept the prisoner's statement as a confession.—*Reg. v. Gunesh Koormee*, 4 W. R. 1.

WHERE the provisions of s. 364 are not observed, and there is no certificate by the Magistrate that the examination of the accused was taken in the hearing and in the presence of that officer, and there is no statement that that examination contains the whole statement of the accused, a Sessions Judge acts rightly in rejecting the evidence, and not allowing it to go to the assessors.—*Reg. v. Radhoo Jana and others*, 12 W. R. 44; 3 B. L. R. 59.

THE direction of s. 364, enjoining that an accused person shall sign the record, is not satisfied by the following: "Signature of A B (the accused), the handwriting of C D." Where the conviction of a person was based upon a confession thus subscribed, the High Court reversed it, and held that the Sessions Judge was bound to prevent the production of such a confession.—*Reg. v. Daya Anand and Ranchod Khalpo*, 11 Bom. H. C. Rep. 44.

UNDER this section it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused, and every answer given by him, and that he had had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient, but in case of doubt oral evidence should be admitted to prove the regularity of the proceeding.—*Reg. v. Gostha Lal Datta*, 7 B. L. R. 62.

WHERE a Magistrate omitted to attest and certify the statement of the accused, it was held that an Appellate Court had no power to direct the defect to be remedied by the Magistrate, and then to receive the statement as evidence. Such a defect is not necessarily fatal to the case. The Appellate Court may, before acting on the unattested and uncertified statement, take evidence that such statement was really made.—*Reg. v. Vyankatray Shrinivas*, 7 Bom. H. C. Rep. 50.

AN accused person, whose signature to a statement made by him to the committing Magistrate is not taken as provided in s. 364, is not prejudiced thereby within the meaning of that section, unless he is unfairly affected as to his defence on the merits. Where a prisoner in the Court of Sessions was represented by a pleader who had opportunity to object to the admissibility of his statement, and did not, the High Court held that he was not prejudiced.—*Reg. v. Deva Dayal*, 11 Bom. H. C. Rep. 237.

WHEN arraigning an accused, and before receiving his plea, the Court should be careful to ensure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly the nature of the charge to which he is called upon to plead. It is not necessary that a statement made to a Court by an accused in a foreign language should be taken down in the words of that language. The language in which the statement is conveyed to the Court by the interpreter is the language in which it should be recorded.—*Empress v. Vaimbileo*; *Vaimbileo v. The Empress*, 1 L. R., 5 Cal. 826.

WHEN a confession is made to a Magistrate by an accused person during an enquiry held previously to the case being taken up by the committing officer and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of ss. 164 and 364. If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session may take evidence that the accused person duly made the statement recorded; but a Court of Session is not at liberty to treat a deposition sent up with the record and made by the recording officer before the committing officer to the effect that the accused person did, in fact, duly make before him the statement recorded as evidence of that fact. In such a case the recording officer must himself be called and examined by the Court of Session, except in cases in which the presence of the recording officer cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court of Session considers unreasonable.—*Noshai Mistri and Ranchandra Haldar v. The Empress*, 1 L. R., 5 Cal. 958; 6 Cal. Law Rep. 353.

Act X., 1875, **365.** Every High Court established by Royal Charter, and the
s. 68, includ- Record of evidence in Chief Court of the Panjáb, may, from time to
ing Chief High Court, time, by general rule, prescribe the manner in
Court. which evidence shall be taken down in cases coming before the Court,
 and the Judges of such Court shall take down the evidence or the
 substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Act VIII, **366.** The judgment in every trial in any Criminal Court of original
1859, s. 183. Mode of delivering judgment. jurisdiction shall be pronounced in open Court
Act X., 1872, either immediately or at some subsequent time
ss. 211, para. of which due notice shall be given to the parties or their pleaders; and
3, 462. the accused shall, if in custody, be brought up, or, if not in custody, shall
 be required to attend, to hear judgment delivered, except where his
 personal attendance during the trial has been dispensed with and the
 sentence is one of fine only, in which case it may be pronounced in the
 presence of his pleader.

Act X., 1872, **367.** Every such judgment shall, except as otherwise expressly
s. 463. provided by this Code, be written by the presid-
Cf. Act X., Language of judgment. ing officer of the Court in the language of the
1877, s. 200. Court, or in English; and shall contain the point or points for determi-
Act X., 1872, nation, the decision thereon, and the reasons for
ss. 464, para. Contents of judgment. the decision; and shall be dated and signed by
1. the presiding officer in open Court at the time of pronouncing it.
Cf. Act VIII.,
1859, s. 185.

Act X., 1872, It shall specify the offence (if any) of which, and the section of the
ss. 461, cl. Indian Penal Code or other law under which, the accused is convicted,
1, 464, para. and the punishment to which he is sentenced.
1.

Act X., 1872, When the conviction is under the Indian Penal Code, and it is
s. 461, cl. 2. Judgment in alternative. doubtful under which of two sections, or under
 which of two parts of the same section, of that
 Code the offence falls, the Court shall distinctly express the same, and
 pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which
 the accused is acquitted, and direct that he be set at liberty.

Act X., 1872, If the accused is convicted of an offence punishable with death,
s. 287, para. and the Court sentences him to any punishment other than death, the
2. Court shall, in its judgment, state the reason why sentence of death was
 not passed:

Act X., 1872, Provided that, in trials by jury, the Court need not write a judg-
ss. 255, last ment, but the Court of Session shall record the heads of the charge to
para. 464, the jury.
para. 4.

UNDER s. 367 the heads of charge to the jury must be recorded at sufficient
 length to enable the Appellate Court, if necessary, to decide on a question of mis-
 direction to the jury.—Reg. v. Kasim Shaikh, 23 W. R. 32.

A SESSIONS JUDGE should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial.—*Reg. v. Mahomed Ali and others*, 13 W. R. 50.

WHERE an illegal sentence of whipping, in addition to imprisonment, was passed by a Magistrate, and the discovery of the illegality was made before execution, but after sentence had been pronounced and signed, it was held that such sentence could be altered only by the High Court.—*Mad. H. Ct. Pro.*, Nov. 13, 1873; 8 *Mad. Jur.* 466.

IN a case in which two contradictory statements made in the course of a judicial proceeding were the subject of a charge under s. 193, it was held that those two statements alone were sufficient for a conviction, though it was advisable that some evidence should be offered to prove the truth or falsity of one of the statements. The absence of such evidence was no bar to a conviction.—*Reg. v. Gonowri*, 22 W. R. 2.

AN alternative finding under this section should not be resorted to until both the committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be based in a case of giving false evidence upon two statements which are not absolutely contradictory, the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made.—*Reg. v. Bedoo Nshyo*, 12 W. R. 11.

Held by the majority (Jackson J., dissenting) that a charge framed on the model given in the schedule of the Code of Criminal Procedure, charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193, Penal Code, is a good charge, and that (Phear and Jackson, JJ., dissenting) the Court or Jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or Jury should find that the allegations made in the charge are proved.—*Reg. v. Mahomed Humayoon Shah*, 21 W. R. 72; 13 B. L. R. 324 (F. B.).

- 368.** When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead. *Act X., 1872 s. 321. Act X., 1875 s. 113.*
- Sentence of death.*
- 369.** No sentence of transportation shall specify the place to which the person sentenced is to be transported. *Act X., 1872 s. 319.*
- Sentence of transportation.*
- 369.** No Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in section 395, or to correct a clerical error. *Act X., 1872 s. 461, para. 1, second sentence.*
- Court not to alter judgment.*

A MAGISTRATE has no authority to vary any sentence he may have once passed on a prisoner.—*Reg. v. Tukia Valad Ganji*, 1 *Bom. H. C. Rep.* 3.

A SESSIONS JUDGE has no power to alter or set aside a conviction and sentence once made and signed by him.—*Reg. v. Poran Mal*, 23 W. R. 49.

THE Code of Criminal Procedure contains no provisions for a review of an order passed in a criminal case.—*Reg. v. Mehtarji Gopalji et al.*, 7 *Bom. H. C. Rep.* 67.

THE Court has no power to review its judgment in criminal cases, as ruled in Full Bench judgment (5 W. R. 61).—*Krishno Churn and Moheram of Assam*, 17 W. R. 2.

THE High Court cannot entertain an application to review a judgment passed by it on appeal in a criminal case. *Seemle*.—No Subordinate Criminal Court has the power to review its own judgment.—*Reg. v. Godai Raout*, 5 W. R. 61; B. L. R. Sup. Vol. 436 (F. B.).

WHERE a Magistrate passed an illegal sentence of whipping in addition to imprisonment, but discovered the illegality after he had signed and pronounced the sentence, and before it was executed, it was held that it was the High Court alone that could alter the sentence.—8 *Mad. Jur.* 466.

A JUDGMENT or final order, pronounced and signed in accordance with the requirements of this section, cannot be altered or reviewed by the Court which gives such judgment or order. If the Court, after pronouncing and signing the judgment or order, should discover any error of law in the proceedings, the proper course is to apply to the High Court for their order. — Mad. H. C. Pro., Nov. 13, 1873. In the meantime, if the prisoner is suffering prejudice, the Magistrate may direct the jailor to suspend the execution of the sentence, and simply detain the prisoner, but not beyond the term of imprisonment. — *Empress v. Tukaram Ranji*, Bom. H. Ct. 29, 1878.

Act IV., 1877, **370.** Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars :—
s. 114. Presidency Magistrate's judgment.

- (a) the serial number of the case ;
- (b) the date of the commission of the offence ;
- (c) the name of the complainant (if any) ;
- (d) the name of the accused person, and (except in the case of an European British subject) his parentage and residence ;
- (e) the offence complained of or proved ;
- (f) the plea of the accused and his examination (if any) ;
- (g) the final order ;
- (h) the date of such order ; and

Act IV., 1877, (i) in all cases in which the Magistrate inflicts imprisonment, or
s. 126. fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Act XI., 1874, **371.** The judgment shall be explained to the accused, and on his
s. 41, para. Judgment to be explained application a copy of the judgment, or, when
1. and copy given to accused. he so desires, a translation in his own language,
if practicable, or in the language of the Court, shall be given to him
without delay. Such copy shall, in any case other than a summons-
case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Act XI., 1874, When the accused is sentenced to death by a Sessions Judge, such
s. 22. Case of person sentenced Judge shall further inform him of the period
to death. within which, if he wishes to appeal, his appeal
should be preferred.

Act X., 1872, **372.** The original judgment shall be filed with the record of pro-
s. 464, para. Judgment when to be ceedings, and where the original is recorded in
3. translated. a different language from that of the Court, and
the accused so requires, a translation thereof into the language of the
Court shall be added to such record.

Act X., 1872, **373.** In cases tried by the Court of Session, the Court shall for-
s. 302, para. Court of Session to send ward a copy of its finding and sentence (if any)
1. copy of finding and sentence to the District Magistrate within the local limits
to District Magistrate. of whose jurisdiction the trial was held.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. Act X., 1872,
s. 287, para.
1.

Sentence of death to be submitted by Court of Session.

A Sessions Judge is not authorized to sentence a prisoner convicted of murder to anything less than transportation for life, but only requires the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in such cases, the Judge may record those circumstances and submit them for the consideration of the Government, and the Government may act as to it seems proper.—Reg. v. Dabee and others, W. R. Sp. 27.

WHERE the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges, but the Sessions Judge, being of opinion that the evidence established the former charge, recorded a conviction and sentence for murder only, the High Court, being of opinion, on a reference, that the offence proved was culpable homicide not amounting to murder, did not order a new trial *absolutio*, but left the Sessions Judge to complete the trial by recording the finding on the second charge of culpable homicide not amounting to murder.—Reg. v. Balapa Bin Dundapa and others, 1 L. R., 1 Bom. 639.

375. If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session. Act X., 1872,
s. 289.

Power to direct further inquiry to be made or additional evidence to be taken.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court— Act X., 1872,
s. 288.

Power of High Court to confirm sentence or annul conviction.

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

WHERE a case is referred to the High Court under s. 374, the Court is bound, under s. 376, to go into the facts of the case, although the conviction was by the verdict of a jury.—Reg. v. Jaffir Ali, 19 W. R. 57.

AFTER committing murder, the prisoner attempted suicide by cutting his own throat. The condition of the convict rendered it likely that, if he were hanged, decapitation would ensue. Accordingly the sentence of death was commuted to one of transportation for life.—*Boodhoo Jolaha*, Appellant, 2 Cal. Law Rep. 215.

THE High Court, to which a reference was made by a Court of Session for confirmation of a sentence of death on conviction of murder, cannot, in the absence of an appeal, alter the conviction to one of culpable homicide not amounting to murder, if it be of opinion that the evidence does not establish the former, but the latter. It must order a new trial for that purpose.—*Reg. v. Balapa Bin Dundapa and others*, 1. L. R., 1 Bom. 639.

A Division Court of the High Court ordered the Magistrate, who had refused to enquire into a charge of murder on the ground he had no jurisdiction, to enquire into such charge, considering that the Magistrate had jurisdiction to make such enquiry. The Magistrate enquired into the charge, and committed the accused person for trial. The Court of Session convicted the accused person on the charge, and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court. *Held* (*per* Stuart, C.J., Spankie, J., and Oldfield, J.), that, in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction.—*Empress v. Sarmukh Singh*, 1. L. R., 2 All. 187.

Act X., 1872, s. 290. **377.** In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

Act X., 1872, s. 271B. **378.** When any such case is heard before a Bench of Judges, and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Act X., 1872, s. 301, para. 1. **379.** In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Act X., 1872, ss. 18, 36. **380.** When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(a) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(b) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(c) may acquit the accused; or

(d) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Session otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Session, the result of such inquiry and the evidence shall be certified to such Court.

THIS section, as regards the necessity for confirmation of the sentence by the Sessions Judge, refers to cases in which the sentence of imprisonment is a sentence of upwards of three years, without including any additional sentence as to fine or whipping.—In the matter of the petition of Sunsher Khan; *Empress v. Sunsher Khan*, I. L. R., 6 Cal. 624.

CHAPTER XXVIII.

OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Act X., 1872,
s. 301, para.
2.

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Act X., 1872,
s. 306.
Act X., 1875,
s. 114, adding
"to transportation
for life."

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Act X., 1872,
s. 302A, cl.
1.
(Act XI,
1874, s. 32.)
Act IV., 1877,
s. 183.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Act X., 1872,
s. 303.
Act X., 1875,
ss. 103, 104.
Act IV., 1877,
s. 184.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Act X., 1872,
s. 304.
Act X., 1875,
s. 104.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by

Act X., 1872,
s. 307, para.
1.

Execution of order passed
under section 376.

Postponement of capital
sentence on pregnant woman.

Execution of sentences of
transportation or imprisonment
in other cases.

he is to be confined, and,
jail, shall forward him to such jail, with the warrant.

Direction of warrant for
execution.

Warrant with whom to
be lodged.

Warrant for levy of fine.

Act X., 1875, s. 106, distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.
 Act IV., 1877, s. 185.

IN EVERY case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the Court which levies the fine must be the same as the Court which imposed it.—*Chunda Kooma Nutter v. Mudhoosoodan Dey*, 9 W. R. 50.

ACCORDING to the Bombay High Court, only moveable property is liable for satisfaction of a fine under this section.—*Reg. v. Lalla Karwar*, 5 Bom. H. C. Rep., Cr. Ca., 63. But it was previously held by the Calcutta High Court that, on the death of the offender, any property which would be liable for payment of his debts would be liable for payment of a fine under this section, if unpaid.—4 W. R. 6 (C. L.).

DIRECTLY on passing a sentence which includes a fine leviable by distress, whether that be the only punishment or not, and whether any provision be made for imprisonment on default of payment or not, it shall be lawful for the Magistrate to issue his warrant for the levy of the fine by distress and sale of the goods of the offender; that is, imprisonment and distress may be simultaneously ordered.—*Per Ainslie, J.*, in *Reg. v. Jungli Beldar*, 8 B. L. R., App., 47.

ACCORDING to the argument used by the Full Bench of the High Court, it appears that, if a claimant appear questioning the ownership of property attached under this section, a judicial officer commits no error in law by refusing adjudication, as the law does not expressly empower him to decide on such claims, as the claimants are not barred by such sale, and may bring a suit in the Civil Court against the purchasers to establish their right.—*Reg. v. Chinnoo Roy*, 7 W. R. C. R. 35.

HELD by the majority of the Court that an offender who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine is still liable to have the amount levied by distress and sale of any moveable property belonging to him which may be found within the jurisdiction of the Magistrate of the District, whether the officer who inflicted the fine issued any special directions on the subject or not (*Seton-Karr, J.*, dissenting).—*Reg. v. Modoo-soodan Day* and 9 others, 3 W. R. 61.

AN offender who has undergone the full term of imprisonment to which he has been sentenced in default of payment of a fine is still liable under this section to have the amount of the fine levied by distress and sale of any moveable property belonging to him which may be found within the jurisdiction of the Magistrate of the District.—*Reg. v. Modoo-soodan Dey, &c.*, 5 R. J. P. J. 110, Aug. 15, 1865. When such property is outside the jurisdiction of the said Court, the amount may be levied on the warrant being endorsed by the Magistrate of the district in which such property is situated.

Act X., 1872, s. 307, para. 2, 387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the effect of such warrant. the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Act IV., 1877, s. 185, 388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 336, it may suspend the execution of the sentence of imprisonment, and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day

not being more than fifteen days from the time of executing the bond; and, in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

A PRISONER was sentenced to imprisonment and fine, and in default of payment of the fine to a further term of imprisonment. He paid a part of the fine, but, that fact not having been communicated to the jailor, underwent the entire further term of imprisonment. *Held* that the High Court had no power to order the fine to be refunded. An application should be made to Government.—*Reg. v. Natha Mula*, 4 Bom. H. C. Rep., Cr. Ca., 37.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

Who may issue warrant.

Act X., 1872,
s. 307, last
para.
Act IV., 1877,
s. 185, last
sentence.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

Act X., 1872,
s. 302A, cl.
2.
(Act XI.,
1874, s. 32.)
Act IV., 1877,
s. 183.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

Execution of sentence of whipping, in addition to imprisonment.

Act X., 1872,
s. 310.
Act IV., 1877,
s. 187.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Act X., 1872,
s. 311, para.
3.
Act XI., 1874,
s. 33, para.
1.

WHEN a sentence of whipping is carried into effect in the presence of the Magistrate who passed it, it is the duty of the said Magistrate to record the fact.—*Mad. H. C. Pro.*, July 15, 1864; *Weir*, p. 47.

A DIRECTION that a sentence of whipping shall be inflicted after a term or terms of imprisonment exceeding 15 days has or have been undergone is illegal.—*Mad. H. C. Pro.*, Nov. 13, 1871, and Dec. 10, 1873; *Weir*, p. 47.

IN passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. On the recommendation of the Sessions Judge, the High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out.—*Mur Chundra Kulal v. Jafer Ali*, 20 W. R. 72; 6 *Mad. H. C. Rep.*, App., 38.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

Act X., 1872,
s. 311, para.
1.
Act X., 1875,
s. 108.
Act IV., 1877,
s. 188.

Act X., 1872, Limit of number of
s. 311, para. stripes.

In no case shall such punishment exceed thirty stripes.

Act X., 1872, Not to be executed by
s. 312, para. instalments.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

Act IV., 1877, Exemptions.
s. 190.

- (a) females;
- (b) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;
- (c) males whom the Court considers to be more than forty-five years of age.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Act X., 1872, s. 312, paras. 1 and 2. Whipping not to be inflicted if offender not in fit state of health.
Act XI., 1874, s. 33, para. 2.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Act X., 1875, s. 108.
Act IV., 1877, s. 189.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Act X., 1872, s. 313.
Act X., 1875, s. 108.
Act IV., 1877, s. 191.

Procedure if punishment cannot be inflicted under section 394.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say:—

Act X., 1872, s. 316.
Act X., 1875, s. 110.
Act IV., 1877, s. 192.

Execution of sentences on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or

transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. When a person already undergoing a sentence of imprisonment, Act X., 1872, s. 317.
 Sentence on offender already sentenced for another offence. penal servitude, or transportation, is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude, or transportation, shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced: Act X., 1875, s. 111. Act IV., 1877, s. 193.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

WHERE a Court, in ignorance of a prior sentence then in force, imposes a term of imprisonment, it is competent, of its own motion, on discovery of the mistake, to amend its own order, so far as to direct when it shall begin to have effect, for the amendment only refers to the time at which the sentence shall commence, and not to the sentence itself.—No. 679, July 15, 1865, Cal. H. C., 3 W. R. 16 (C. L.).

In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section, which have been clearly proved against them. On conviction of each of these separate sentences a separate sentence on each conviction should be passed, with a direction (under s. 397) that each should take effect on the expiry of the next prior sentence.—Reg. v. Sobrai Gowallah and others, 20 W. R. 70.

398. Nothing in section 396 or section 397 shall be held to excuse Act X., 1872, s. 317, proviso.
 Saving as to sections 396 and 397. any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

399. When any person under the age of sixteen years is sentenced Act X., 1872, s. 318. Act X., 1875, s. 112.
 Confinement of youthful offenders in reformatories. by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

- Act X., 1872,
s. 305. **400.** When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES.

- Act X., 1872,
s. 322, para.
1. **401.** When any person has been sentenced to punishment for an offence, the Governor-General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced.

Now. Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

- Act X., 1872,
s. 322, para.
2. If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor-General in Council or the Local Government, the Governor-General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence.

- Act XI., 1874,
s. 34, cl. 2. Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

- Act X., 1872,
s. 322, para.
3. **402.** The Governor-General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

- Act X., 1872,
s. 460. **403.** A person who has once been tried by a Court of competent jurisdiction for an offence, and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for
- Act X., 1875,
s. 117. Person once convicted or acquitted not to be tried for same offence.
- Act IV., 1877,
s. 113.

any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Act X., 1872,
s. 117, para.
2, s. 195, Ex-
plns., s. 215,
Expl. 2.
Act X., 1875,
s. 14.

Illustrations.

(a.) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b.) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c.) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d.) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e.) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(f.) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g.) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C, may afterwards be charged with, and tried for, dacoity on the same facts.

A FORMER trial, which was set aside on the ground of want of jurisdiction and illegality, is not a bar to a second trial.—Reg. v. Muthoorapershad Panday and others, 2 W. R. 10.

A PERSON tried and acquitted on a charge of using criminal force under s. 352 (which includes the offence of battery) cannot be tried in respect of the same criminal matter on a charge of hurt.—Kaplan v. Smith, 16 W. R. 3; 7 B. L. R., App., 25.

WHERE a prisoner is released by the Court of Session on the ground that the proceedings had in his case were illegal and irregular, there is no bar to his being subsequently tried and convicted of the offence.—Reg. v. Wahed Ali and others, 13 W. R. 42.

IT is only where a previous conviction or acquittal is in force—that is, where it has not been subsequently set aside by a higher Court—that it operates as a bar to a fresh trial for the same offence. Accordingly, where a conviction was set aside on the ground of misdirection to the jury, it was held that this did not bar a fresh trial.—Reg. v. Kulichurn Gangooly, 7 W. R. 2.

A PERSON made a complaint to the police that the accused had enticed away his wife (a non-cognizable offence), and committed theft (a cognizable offence). The police enquired into the latter offence, and, finding no *prima-facie* case made out, reported to that effect to a Magistrate, who directed that that offence be expunged from the list of reported offences. *Held* that, under the circumstances, there had been no dismissal of the complaint in respect of the former offence, and that there was no bar to the complaint as to that offence being taken up and proceeded with.—Government of Bombay v. Shidapa, 1 L. R., 5 Bom. 405.

TO RENDER a former acquittal or conviction a defence on a second trial, the offence must be the same offence. A prisoner was charged with having forged pottahs, A and B, bearing the same date, and adduced in evidence by him in the same suit. No mention of any charge as to pottah B was made in the order of commitment; and the prisoner having been acquitted on an indictment for forging pottah A, it was held by the majority of the Court (Markby, J., dissenting) that the plea of *autrefois acquit* was inadmissible on a subsequent trial of the prisoner for forging the pottah B.—Reg. v. Dwarkanath Dutt, 7 W. R. 15; 2 L. J. N. S. 67 (F. B.).

THE Calcutta High Court (following the case of Dwarkanath Dutt, 7 W. R. 15) ruled that a Court before which a second trial is held has nothing to do with the evidence given in the former trial except for the purpose of ascertaining whether the offence in the two trials is the same. A prisoner originally charged with an offence under one section (302), and acquitted of that charge, was committed, the day following that on which she was acquitted, for trial under another section (307), without any witnesses being examined on the charge under s. 307, and without having any opportunity of cross-examining the witnesses on the first charge, with respect to the second charge. *Held* that the irregularity was one which was not covered by s. 537, Code of Criminal Procedure, and that the prisoner had been prejudiced thereby in her defence. The trial under s. 307 was accordingly quashed, and a new trial ordered.—Reg. v. Mussamut Itwarya, 22 W. R. 14; 14 B. L. R. 54, App. 1.

PART VII.

OF APPEAL, REFERENCE, AND REVISION.

CHAPTER XXXI.

OF APPEALS.

Act X., 1872,
ss. 282, para.
2, 286, omit-
ting the Il-
lustrations.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force. Unless otherwise provid-
ed, no appeal to lie.

THE only course to be pursued where it is sought to set aside an order of discharge made by a Police Magistrate is that laid down in s. 168 of Act IV. of 1877 (ss. 417 and 427 of this Code), and as by s. 168 of Act IV. of 1877 there is no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain, under the Court's extraordinary powers, that which he might obtain had he a right of appeal.—*In re Poona Churn Pal*, 1 L. R., 7 Cal. 447.

405. Any person whose application under section 89 for the deli- Act IV., 1877,
 Appeal from order re- s. 180.
 jecting application for very of property or the proceeds of the sale
 restoration of attached thereof has been rejected by any Court, may
 property. appeal to the Court to which appeals ordinarily
lie from the sentences of the former Court.

406. Any person required by a Magistrate, other than the District Act X., 1872,
 Appeal from order requir- s. 267.
 ing security for good beha- Magistrate or a Presidency Magistrate, to give
 viour. security for good behaviour under section 118,
may appeal to the District Magistrate.

407. Any person convicted on a trial held by any Magistrate of the Act X., 1872,
 Appeal from sentence of s. 266, omit-
 Magistrate of the second or ting "or to
 third class. a Magistrate
of the first
class who has
been empow-
ered, &c."
second or third class, or any person sentenced
under section 349 by a Sub-divisional Magis-
trate of the second class, may appeal to the
District Magistrate.

The District Magistrate may direct that any appeal under this Act X., 1872,
 Transfer of appeals to first s. 47, para.
 class Magistrate. 2.
section, or any class of such appeals, shall be
heard by any Magistrate of the first class subor-
dinate to him and empowered by the Local Government to hear such ap-
peals, and thereupon such appeal or class of appeals shall be presented
to such Subordinate Magistrate, or if already presented to the District
Magistrate shall be transferred to such Subordinate Magistrate. The
District Magistrate may withdraw from such Magistrate any appeal or
class of appeals so presented or transferred.

408. Any person convicted on a trial held by an Assistant Sessions Act X., 1872,
 Appeal from sentence of ss 269, para.
 Assistant Sessions Judge or 1, 270, para.
 Magistrate of the first class. 2.
Judge, a District Magistrate, or other Magistrate
of the first class, or any person sentenced under
section 349 by a Magistrate of the first class,
may appeal to the Court of Session:

Provided as follows:—

(a) when in any case an Assistant Sessions Judge or a District Act X., 1872,
 Magistrate passes any sentence which is subject to the confirmation of s. 270, paras.
 the Court of Session, every appeal in such case shall lie to the High 1 and 3.
 Court, but shall not be presented until the case has been disposed of by
 the Court of Session;

(b) any European British subject so convicted may, at his option, Act X., 1872,
 appeal either to the High Court or the Court of Session. s. 79.

409. An appeal to the Court of Session or Sessions Judge shall be
 Appeals to Court of Ses- heard by the Sessions Judge or by an Addi-
 sion how heard. tional or Joint Sessions Judge.

410. Any person convicted on a trial held by a Sessions Judge, or Act X., 1872,
 Appeal from sentence of ss. 80, 270,
 Court of Session. para. 3, 271.
an Additional or a Joint Sessions Judge, may
appeal to the High Court. Act XI., 1874,
s. 22, cl. 1.

THE aggregate of the sentences passed under s. 35 in a case of simultaneous
 convictions for several offences must be considered a single sentence for the pur-
 poses of confirmation or appeal.—*Reg. v. Rana Bhivgowda*, 1 L. R., 1 Bom. 223.

FOR purposes of appeal, the whole punishment awarded to one person on one
 trial for several instances of the same offence is to be regarded as one sentence.
Semble.—That where a person is tried at the same time for several instances of the
 same offence, it is not necessary that more than a single sentence should be passed.

But if a separate sentence be passed on each head, it was held that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court.—*Reg. v. Gohun Abus*, 12 Bom. H. C. Rep. 147.

Act IV., 1877, s. 167. **411.** Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

THE words "to imprisonment for a term exceeding six months, or to fine exceeding two hundred rupees," in s. 167, Act IV., 1877 (i.e., s. 411, Act X., 1882), are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid.—In the matter of Jothoran Davay and another, 1, L. R., 2 Mad. 30.

Act X., 1872, s. 273, last para. **412.** Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty, and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

WHERE a person has, on his own plea, been convicted on a trial held by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal, and therefore also the sentence does not lie according to the provisions of s. 167 of the Presidency Magistrates' Act IV. of 1877 (s. 412 of this Code), albeit that the Magistrate had sentenced the person to imprisonment for a term exceeding six months, or to a fine exceeding two hundred rupees.—*Empress v. Jafar M. Talab*, 1, L. R., 5 Bom. 85.

Act X., 1872, s. 273, para. 1. **413.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

Act X., 1872, s. 273, para. 2. **EXPLANATION.**—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

THIS section merely denies an appeal where there is a sentence of not more than one month's imprisonment, or a sentence to a fine not exceeding 50 rupees. Where there is a sentence of fine and imprisonment, an appeal unquestionably lies.

A WAS convicted of offences under ss. 143, 447, and 211, Penal Code, and sentenced by the Magistrate to one month's imprisonment for each offence: *Held* that under this section there was no appeal. The separate sentences could not be taken together and combined in one sentence so as to give a right of appeal.—*Reg. v. Nagardi Paramanik*, June 2, 1868, Crim. App. Side, Cal. H. C., 1 B. L. R. 3.

WHERE several persons were tried together and convicted, under s. 147 of the Penal Code, of rioting, and two of them were sentenced to pay each a fine of Rs. 50, or, in default of payment, to undergo rigorous imprisonment for a month, and the others were sentenced to a severe punishment, the Sessions Judge entertained an appeal by all the prisoners, being of opinion that the test as to whether a case is appealable is the maximum sentence passed in it. The High Court annulled the order of the Sessions Judge passed with reference to those of the accused who had been only fined Rs. 50, and restored the original sentences passed upon them.—*Reg. v. Kalabhai Meghabhai et al.*, 7 Bom. H. C. Rep. 35.

414. Notwithstanding anything hereinbefore contained, there shall Act X., 1872,

No appeal from certain summary convictions. be no appeal by a convicted person in cases tried summarily, in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only. s. 274, para. 1.

415. An appeal may be brought against any sentence referred to Act X., 1872,

Proviso to sections 413 and 414. in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace. s. 274, para. 2.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section. Act XI., 1874, s. 24.

416. Nothing in sections 413 and 414 applies to appeals from sen- Act X., 1872,

Saving of sentences on European British subjects. tences passed under Chapter XXXIII. on European British subjects. s. 274, para. 3.

417. The Local Government may direct the Public Prosecutor to Act X., 1872,

Appeal on behalf of Government in case of acquittal. present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court. s. 272, paras. 1 and 2. Act IV., 1877, s. 168, para. 1.

AN APPEAL by the Local Government is within time if presented within six months from the date of acquittal. The 60 days rule does not apply.—*Empress v. Jyadulla*, 1 L. R., 2 Cal. 436 (F. B.).

IN AN appeal under this section, the High Court has no power to order the accused to be arrested pending the appeal.—*Reg. v. Govind Tewari* and another, 1 L. R., 1 Cal. 281. See also 1 L. R., 2 All. 386; 1 L. R., 2 All. 340 (F. B.).

WHERE the High Court, on the appeal of the Local Government, set aside an order of acquittal, and passed sentence on the accused, it was held that such sentence should run from the date of the committal of the accused to jail.—*Empress v. Mahuddi*, 6 Cal. Law Rep. 349.

THE withdrawal of a complaint by the complainant operates as an acquittal, and the High Court has no authority to entertain the matter at all, except upon an application duly made with the sanction of the Government.—*Luchi Behara v. Nityannund Dass* and others, 19 W. R. 55.

THE words "appellate judgment of acquittal" in the corresponding section of the Code of 1872 were meant to include all judgments of an Appellate Court by which a conviction is set aside. A complaint made at a police-station is not made before any Civil or Criminal Court, and, if it proves false, prosecution for it does not require the sanction of any Court under s. 195 of the present Code.—*Government of Bengal v. Gokool Chunder Chowdhry*, 24 W. R. 41.

THE only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate is that laid down in s. 168 of Act IV. of 1877 (i.e., s. 417 of this Code), and as, by that section, there is no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain, under the Court's extraordinary powers, that which he might obtain had he a right of appeal.—In the matter of *Poona Churn Pal*, 1 L. R., 7 Cal. 447.

ON THE trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court; but, by direction of the Local Government under this section, an appeal was preferred: *Held* that the appeal was duly made; that the judgment passed by the Court of Session, following the verdict of the jury acquitting the prisoner, is a judgment of acquittal within the meaning of this section; and that, there being an acquittal on the charge of murder, the appeal lay.—*Empress v. Jadu Nath Gangopadhyaya*, 1. L. R., 2 Cal. 273.

Act X., 1872, **418.** An appeal may lie on a matter of fact as well as a matter of
 s. 271, last Appeal on what matters law, except where the trial was by jury, in
 para. admissible. which case the appeal shall lie on a matter of
Act XI., 1874, law only.
 s. 22.

Compare Act **EXPLANATION.**—The alleged severity of a sentence shall, for the
X., 1877, s. purposes of this section, be deemed to be a matter of law.
 541.

IN A case tried by jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected.—*Reg. v. Gopal Bhereewalla and Bhelu Bhereewalla*, 1 W. R. 21.

IT WAS held by Maclean, J. (Mitter, J., *dubitante*), that the trial by a jury of an offence triable with assessors is not invalid on that ground, but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trial by jury is not invalid.—*Empress v. Mohim Chundra Rai and another*, 1. L. R., 3 Cal. 765.

Act X., 1872, **419.** Every appeal shall be made in the form of a petition in writing
 s. 275. Petition of appeal. presented by the appellant or his pleader, and
Act IV., 1877, every such petition shall (unless the Court to
 s. 169. which it is presented otherwise directs) be accompanied by a copy of
 the judgment or order appealed against, and, in cases tried by a jury,
 a copy of the heads of the charge recorded under section 367.

A PETITION of appeal in a criminal case may be presented to the Appellate Court by any person authorized by the appellant to present it.—*In re Subba Aitala and another*, 1. L. R., 1 Mad. 304.

IN A case tried by jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected.—*Reg. v. Gopal Bhereewalla and Bhelu Bhereewalla*, 1 W. R. 21.

PRISONERS applying for copies required for the purposes of appeal should invariably be furnished with a copy of the judgment or order appealed against, and not merely with a copy of the sentence.—*Mad. H. C. Pro.*, Dec. 21, 1874; *Weir*, p. 9.

Act X., 1872, **420.** If the appellant is in jail, he may present his petition of appeal
 s. 277. Procedure when appel- and the copies accompanying the same to the
Act IV., 1877, lant in jail. officer in charge of the jail, who shall thereupon
 s. 171. forward such petition and copies to the proper Appellate Court.

EVERY facility should be allowed to prisoners to enable them to prepare their petition of appeal.—*Nitto Gopal Paulit, Denobundoo Surnokar, and others*, *Appellants*, 13 W. R. 69.

PRISONERS and others are to have the fullest opportunity for giving vakalat-nāmas to whomsoever they please.—*In re Sheik Dadabhai Valad Sheik Muhammad*, 1 Bom. H. C. Rep. 16.

421. On receiving the petition and copy under section 419 or **Act X., 1872,**
 Summary rejection of section 420, the Appellate Court shall peruse **s. 278, paras.**
 appeal. the same, and, if it considers that there is no **1 and 2.**
 sufficient ground for interfering, it may reject the appeal summarily: **Act IV., 1877,**
 Provided that no appeal presented under section 419 shall be dismissed **s. 172, omit-**
 unless the appellant or his pleader has had a reasonable opportunity of **ting last**
 being heard in support of the same. **sentence**

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

An appellant in a criminal case has a right to appear and be heard by a mukhtar.—*Imperatrix v. Shivram Gundo*, I. L. R., 6 Bom. 14.

An order under this section by the Appellate Court rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings of the case, is a final order falling within the scope of s. 430, and is not subject to revision.—*Empress v. Mahomed Yashin*, I. L. R., 4 Bom. 101. But when a criminal appeal has been rejected without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of the Appellate Court that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to re-hear the appeal on its merits.—*Ruling*, Nov. 7, 1873; 7 Mad. H. C. Rep. 29

422. If the Appellate Court does not reject the appeal summarily, **Act X., 1872,**
 it shall cause notice to be given to the appel- **ss. 62, 269,**
 lant or his pleader, and to such officer as the **para 2, 279.**

Local Government may appoint in this behalf, of the time and place at **Act IV., 1877,**
 which such appeal will be heard, and shall, on the application of such **s. 173.**
 officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court **Act XI., 1874,**
 shall cause a like notice to be given to the accused. **s. 27.**

423. The Appellate Court shall then send for the record of the **Act X., 1872,**
 case, if such record is not already in Court. **ss. 272, para.**
3, 280.

Powers of Appellate Court in disposing of appeal. After perusing such record, and hearing the **Act IV., 1877,**
 appellant, or his pleader, if he appears, and the **ss. 174, 179.**

Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order, and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(c) in an appeal from any other order, alter or reverse such order;

(d) Nothing herein contained shall authorize the Court to alter or **Act X., 1872,**
 reverse the verdict of a jury, unless it is of opinion that such verdict is **s. 271, ex-**
 tended to

appeals by the Crown. erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Act X., 1872,
s. 299, para.
3.

THE High Court has full power, as a Court of Revision, to order a re-trial when necessary. As a Court of Appeal, it has the like power in cases tried with assessors.—*Lucky Narain Nagory*, Petitioner, 24 W. R. 24.

A CRIMINAL appeal cannot be withdrawn after an Appellate Court has heard it.—*In re Dwarka Manjee*, 9 Cal. Law Rep. 427. But it may be withdrawn before such Court has decided to hear it.—*In re Chunder Nath Deb*, 5 Cal. Law Rep. 372.

WHERE some of the accused have appealed, the Appellate Court, in acquitting them, cannot, if it is not a High Court, set aside the sentences of those who have not appealed, but should refer the matter to the High Court.—*Mad. H. C. Pro.*, April 19, 1875.

WHERE the High Court sets aside an acquittal on appeal, and passes sentence on the prisoner, such sentence should commence to take effect from the date on which the prisoner has been committed to jail after his arrest.—*Empress v. Mohuddi*, 6 Cal. Law Rep. 352.

WHERE a Magistrate of the first class passes a sentence of imprisonment and fine, his order is appealable. He cannot, therefore, in such case, make up his record in the manner described by s. 263. It is competent to a Court of Session to order a re-trial of a case which is before it on appeal.—*In re Sher Mahomed and another*, 2 Cal. Law Rep. 511.

WHERE a person who had been convicted under s. 181, Penal Code, appealed to the Sessions Judge, and that officer was of opinion that the offence was rather under s. 193, over which the Magistrate had no jurisdiction, the Calcutta High Court held that the Sessions Judge should have annulled the conviction, and ordered the Magistrate to commit the prisoner for trial.—*In re Herman Singh*, 8 W. R. 30.

WHEN a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a re-trial at the time under s. 423, he is not precluded from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an acquittal. Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court, and the conviction quashed on appeal, a competent Court may retry the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed.—*Rani Reddi and Seshu Reddi*, Petitioners, 1 L. R., 3 Mad. 48.

424. The rules contained in Chapter XXVI. as to the judgment of

Judgments of subordinate Appellate Courts, a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court :

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Act X., 1872,
s. 299, paras.
1 and 2.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence, or order appealed against was recorded or passed. If the finding, sentence, or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended, and, if he is in confinement, that he be released on bail or on his own bond.

Act X., 1872, s. 281, and s. 297, para. 8, in case of Court of Revision.
Act IV., 1877, s. 175.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

A SESSIONS Judge has no authority to suspend his own sentence.—Mad. H. C. Rulings ; 4 Mad. H. C. Rep. 2.

A SESSIONS Judge cannot suspend a sentence while he refers a case to the High Court, no appeal having been brought.—Mad. H. C. Rulings ; 5 Mad. H. C. Rep. App. 1.

A SENTENCE of imprisonment cannot be suspended to take effect at a future period, but must commence from the time that the sentence is passed. Where a Deputy Magistrate postponed the execution of a sentence of imprisonment for a stated period at the request of the accused, to allow the accused to appeal, it was held that the sentence was bad in law, and could not be carried into execution.—*In re Kishen Soonder Bhuttacharjee and another*, Petitioners, 12 W. R. 47 ; 3 B. L. R. 50.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Act IV., 1877, s. 168, para. 3.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Act X., 1872, s. 282, paras. 1, 3, and 4, and s. 289.
Act IV., 1877, s. 176.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken ; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall, for the purposes of Chapter XXV., be deemed to be an inquiry.

THE Court of first instance, which is required to take additional evidence, is not required to give any opinion on it, and cannot record any judgment.—Anonymous, 3 B. L. R. 62.

WHEN an Appellate Court directs further evidence to be taken by a Subordinate Court under s. 428, it is competent to the Subordinate Court before which such

evidence is given, if any offence against public justice as described in s. 195 is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of s. 476.—*Reg. v. Buktear Maifaraz*, 15 W. R. 64 ; 6 B. L. R. 698 (F. B.).

Act X., 1872, s. 271B. (Act XI., 1874, s. 22) **429.** When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Act X., 1872, s. 285. **430.** Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

AN ORDER by the Appellate Court rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings of the case, is a final order falling within the scope of the section, and is not subject to revision.—*Empress v. Mahomed Vashin*, I. L. R., 4 Bom. 101.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

Act IV., 1877, s. 240. **432.** A Presidency Magistrate may, if he thinks fit, refer, for the opinion of the High Court, any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference ; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Act IV., 1877, s. 241. **433.** When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

The High Court may direct by whom the costs of such reference shall be paid.

Act X., 1875, s. 101. **434.** When any person has, in a trial before a Judge of a High Court consisting of more Judges than one, and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer, for the decision of a Court consisting of two or more Judges of such Court, any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail;

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

THE High Court, on a point of law, as to the admissibility of rejected evidence, reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of the High Courts' Criminal Procedure Act (X. of 1875), has power to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial, and a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial (Indian Evidence Act, s. 167).—*Imperatrix v. Petamber Jina*, 1 L. R., 2 Bom. 61.

435. The High Court or any Court of Session, or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

Act X., 1872,
ss. 294, 295,
para. 1.
12 Ben. 253.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence, or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144, and proceedings under section 176, are not proceedings within the meaning of this section.

Act X., 1872,
s. 520.

THE High Court has no power to reduce the amount of recognizances which have been forfeited, but in a case of hardship the matter should be referred to Government.—*Empress v. Nural Huqq and another*, 1 L. R., 3 Cal. 757; 2 Cal. Law Rep. 408.

A MAGISTRATE has no power to remand a criminal case to a Subordinate Magistrate for re-trial after the case has once been dismissed. The courses open to him are (1) to accept a fresh complaint supported by fresh evidence which was not before the Court when the case was dismissed; or (2) if there be no additional evidence to be procured, to report the case for the orders of the High Court.—*In re Dijabur Dutt and others*, 1 L. R., 4 Cal. 647.

CRIMINAL proceedings are bad unless they are conducted in the manner prescribed by law; and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused. No man should sit as a Judge in a case in which he has a substantial interest. A Magistrate should not give evidence in a case in which he is acting judicially, if he can possibly avoid doing so.—*Reg. v. Bhola Nath Sein*, 25 W. R. 57.

IN A case of apprehended breach of peace, the Magistrate bound over the parties in sums of money aggregating on the whole to rupees sixty thousand or upwards. The High Court quashed the order, holding that it was altogether unreasonable. *Per Markby, J.*—The High Court is not debarred from interfering where, in cases requiring the exercise of discretion, it appears upon the face of the proceedings that

the Magistrate has exercised no discretion at all, or has exercised his discretion in a manner wholly unreasonable. *Per Mitter, J.*—The High Court has the power of interfering with judgments, sentences, or orders of Courts subordinate to it, if there has been a material error in any judicial proceeding of such Courts, meaning thereby any error appearing on the face of a judicial proceeding resulting in an unjust order.—*In re Juggut Chunder Chowdhry*, 1. L. R., 2 Cal. 110.

Act X., 1872, **436.** When, on examining the record of any case under section 435
 s. 296, paras. Power to order commit- or otherwise, the Court of Session or District
 2 and 3, (Act ment. Magistrate considers that such case is triable
XI. 1874, s. exclusively by the Court of Session, and that an accused person has
29.) been improperly discharged by the inferior Court, the Court of Session
 or District Magistrate may cause him to be arrested, and may thereupon,
 instead of directing a fresh inquiry, order him to be committed for
 trial upon the matter of which he has been, in the opinion of the Court
 of Session or District Magistrate, improperly discharged :

1 O'Kin. 93. Provided as follows—

(a) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made :

Act XI., 1874, (b) that, if such Court or Magistrate thinks that the evidence
 s. 29. shows that some other offence has been committed by the accused, such
 Court or Magistrate may direct the inferior Court to inquire into such
 offence.

AN ORDER of commitment by a Sessions Judge is bad in form if it does not specify the offence for which the parties are to be committed for trial to the Sessions.—*Joy Kurn Singh and others v. Man Patuck*, 21 W. R. 41.

A SESSIONS JUDGE has discretion to order the commitment to the Court of Session of any accused person discharged by the Magistrate. The non-exercise of such discretion cannot be interfered with by the High Court.—*Reg. v. Sheetaram Chowdhry*, 2 W. R. 44.

A SESSIONS Judge may, after a Magistrate has discharged an accused person, order the Magistrate, to commit the accused person to the Sessions.—*Hurce Chunder Nundee, Am-mokhtar, on behalf of Syud Musinud Ali Chowdhry alias Moochee Meah, Petitioner*, 7 W. R. 38.

THE discharge of a person accused of an offence triable by the Court of Session is no bar to his being again brought, with a view to commitment, before a Magistrate, who may proceed in such a case without an order from the Judge.—*Reg. v. Tilkoo Goala*, 8 W. R. 61.

THE commitment under s. 436, by the District Magistrate, of an accused charged with an offence under s. 380, Penal Code, after his discharge by the Deputy Magistrate, was maintained on the ground that the Deputy Magistrate discharged the accused without examining the principal witness in the case, and because further evidence was available.—*Empress v. Haridayal Karimokar*, 1. L. R., 4 Cal. 16.

AN ORDER by a Judge under this section, directing a Magistrate to commit an accused person, who has been discharged at a preliminary enquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot direct a committal for offences with which the accused was in no way charged before the Magistrate.—*Reg. v. Tarak Nath Mukhopadhyaya*, 10 B. L. R. 285.

THE High Court has the power not only to order the accused to be tried, but also to be committed for trial, if it appear to the High Court that the accused was improperly discharged ; but from the absence of the words "order him to be tried"

in the above section, it seems that a Magistrate is not empowered under that section to direct a Subordinate Court to take further evidence in a similar case.—*Prosunno Coomar Ghose*, Petitioner, 19 W. R. 56.

WHERE a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled, it was held that such Magistrate might commit the accused person to the Court of Session on the evidence given before him at such trial.—*Empress v. Hahi Baksh*, 1. L. R., 2 All. 910.

THE appellant, after his discharge by the Assistant Magistrate upon a charge under s. 457, Penal Code, was committed to the Sessions Court by order of the Sessions Judge under s. 436 of this Code upon charges under ss. 380 and 457, Penal Code : *Held* that the commitment was illegal, and that "session case," within the meaning of s. 436 of this Code, is a case exclusively triable by a Court of Session.—*Empress v. Kanchan Singh*, 1. L. R., 1 All. 413 (F. B.). See 1. L. R., 2 All. 570, *infra*.

A SESSIONS Court has no power under s. 436 to direct the commitment of a person discharged by a Deputy Magistrate, without first giving such person an opportunity of showing cause against such commitment. But the Court has power to direct the Subordinate Court to enquire into any offences for which it considers a commitment should be ordered. When, however, a trial under such a commitment made by order of a Sessions Judge has been duly held, and no actual failure of justice has been caused by the error of the Sessions Judge, s. 537 would be a bar to the reversal of his judgment.—*Empress v. Khamir*, 1. L. R., 7 Cal. 662.

IN a case in which the accused was charged under s. 200, Penal Code, of the offence of using as true a false declaration which by law is receivable as evidence, the Magistrate, after taking evidence, discharged the accused, as he was of opinion that the charge was not made out, and that the evidence did not justify his framing any other charge against the accused. The Sessions Judge, acting under s. 436 of this Code, then directed the Magistrate to commit the accused for trial for forgery : *Held* that the Sessions Judge's order was bad, (1) because it was too vague and indefinite, as it did not specify the document which was forged and the particular in regard to which it was forged ; and (2) because it directed the committal of the accused of an offence with which he had not been in any form accused before the Magistrate, s. 436 of this Code empowering the Sessions Judge to direct a commitment only for some offence with which the accused was substantially charged in the complaint, or which was specified in the warrant, or which was framed as a formal charge by the Magistrate at the preliminary hearing.—*Reg. v. Taruck Nath Mookerjee*.—19 W. R. 30 ; 10 B. L. R. 285.

CERTAIN persons were charged under s. 417, Penal Code, and were discharged by the Magistrate enquiring into the offence under s. 253 of this Code. The Court of Session, considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of that district, suggesting to him to make the case over to a Subordinate Magistrate, with directions to enquire into any offence, other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an enquiry, and committed the accused persons for trial before the Court of Session on charges under ss. 363 and 420, Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under s. 436 of this Code, the case not being a "sessions case" within the meaning of that section, and that the commitment was consequently illegal : *Held* that there was no "direction to commit" within the meaning of that section, *i.e.*, to send the accused persons at once to the Sessions Court, without further enquiry, and whether or not the enquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the enquiry upon the charges under ss. 363 and 420, Penal Code, was rightly held by the Subordinate Magistrate, and the commitment could not be impeached.—*Empress v. Bhup Sing* and another, 1. L. R., 2 All. 570.

Act X., 1872,
s. 298. (Act
XI., 1874,
s. 31.)

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

Act X., 1872,
s. 296, para.
1.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

COUNSEL cannot claim as of right to be heard on a reference to the High Court.—*Reg. v. Devama Shomshekhar*, I. L. R., 1 Bom. 64.

A SESSIONS Judge ought not to refer to the High Court the case of a prisoner who has appealed to him, but should decide it himself.—*Sreekissen v. Juglal and others*, 9 W. R. 5.

WHERE a Sessions Judge considers that a judgment or order is contrary to law, or that the punishment is too severe, he should report the proceedings to the High Court.—*Rajkisto Paul v. Nityanund Paul*, 20 W. R. 50.

A MAGISTRATE should exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every case in which he may detect an error.—*Nibarun Chunder Dass v. Bhuggobutty Churn Chatterjee*, 20 W. R. 40.

WHERE an appeal is preferred to a Sessions Judge from the order of a Magistrate which he considers it legal, the Sessions Judge should himself deal with the case instead of referring it to the High Court.—*Reg. v. Nussuruddeen Shazwol*, 11 W. R. 24.

WHERE there is a Court of Appeal, resort should be had thereto before an application is made to the High Court for the exercise of its powers of revision. The High Court will not exercise its revisional powers until all other remedies provided by law (for instance, the right of appeal) have been exhausted.—*Rajcoomar Singh*, 1 Cal. Law Rep 382; *Empress v. Nilambur Babu*, I. L. R., 2 All 276.

A COURT of Session, after it had asked the assessors their opinion in a case which was being tried by it, suspended the trial of the case, and made a reference to the High Court on a question of jurisdiction which had arisen in the trial of the case: *Held* that it was not intended that that section should be so used, and the Court of Session must dispose of such question itself.—*Empress v. Bhup Singh*, I. L. R., 2 All. 771.

A MAGISTRATE has no power to remand a criminal case to a Subordinate Magistrate for re-trial after, the case has once been dismissed. The courses open to him are (1) to accept a fresh complaint supported by fresh evidence which was not before the Court when the case was dismissed, or (2) if there be no additional evidence to be procured, to report the case for the orders of the High Court.—*In the matter of the petition of Djabar Datta and others*, I. L. R., 4 Cal. 647.

ONE of two prisoners, who were tried jointly before a Bench of Magistrates on the complaint of the District Magistrate, appealed to the Sessions Judge, and was acquitted. The District Magistrate thereupon transmitted the proceedings in the case to the High Court, and asked that they might be quashed on the ground that there had been a failure of justice. *Held* that the Magistrate was not competent to refer the proceedings of a superior Court to the High Court.—*In re David*, 6 Cal. Law Rep. 245.

439. In the case of any proceeding the record of which has been Act X., 1872,
s. 297.
 High Court's powers of revision. called for by itself, or which has been reported for orders, or, which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

THE High Court cannot interfere with an improper acquittal, except on an appeal by the Government.—*Empress v. Miyaji Ahmed*, I. L. R., 3 Bom. 150.

THIS being a proceeding under s. 439, the High Court refused to go into the evidence.—*Empress v. Donnelly*, I. L. R., 2 Cal. 405.

THE High Court is competent, under s. 439, to quash a commitment made by a Court of Session under s. 477.—*Empress v. Lakshman Singh*, I. L. R., 2 All. 398.

A PRIVATE prosecutor can move the High Court, in the case of an acquittal, to exercise its powers of revision under s. 439.—In the matter of the petition of *Sukho v. Durga Prasad*, I. L. R., 2 All. 448.

THE High Court has full power as a Court of Revision to order a re-trial when necessary. As a Court of appeal, it has the like power in cases tried with assessors.—*Luckhy Narain Nagory*, Petitioner, 24 W. R. 24.

CERTAIN prisoners were sentenced to imprisonment. Some of them appealed, and were acquitted. The proper course for the rest is to apply to the Local Government. The High Court will not interfere as a Court of Revision—*Sheo Suran Singh*, Cal. H. C., Aug. 16, 1877.

THE High Court is not precluded by a judgment of acquittal from exercising its powers of revision under s. 439. Such powers can only be exercised where the judgment of acquittal has proceeded on an error of law, and not where it has proceeded on an error of fact.—In the matter of *Hardeo*, I. L. R., 1 All. 139 (F. B.).

THE High Court is not debarred from interfering where, in cases requiring the exercise of discretion, it appears upon the face of the proceedings that the Magistrate has exercised no discretion at all, or has exercised his discretion in a manner wholly unreasonable.—In the matter of *Jagat Chandra Chakravarti*, I. L. R., 2 Cal. 110.

WHERE there is a Court of Appeal, resort should be had thereto before an application is made to the High Court for the exercise of its powers of revision. The High Court will not exercise its extraordinary powers as a Court of Revision so long as the right of appeal remains.—*Empress v. Nilambur Babu*, I. L. R., 2 All. 276; *Rajcoomar Singh*, 1 Cal. Law Rep. 352.

THE High Court has the power not only to order the accused to be tried, but also to be committed for trial, if it appear to the High Court that the accused was improperly discharged; but from the absence of the words "order him to be tried" in the section it seems that a Magistrate is not empowered under that section to direct a Subordinate Court to take further evidence in a similar case.—*Prosunno Coomar Ghose, Petitioner*, 19 W. R. 56.

CRIMINAL proceedings are bad unless they are conducted in the manner prescribed by law; and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused. No man should sit as a Judge in a case in which he has a substantial interest. A Magistrate should not give evidence in a case in which he is acting judicially if he can possibly avoid doing so.—*Reg. v. Bhola Nath Sein*, 25 W. R. 57.

THE Code of Criminal Procedure gives no right to the heir, devisee, executor, or any other representative of a deceased convict, to lodge an appeal, or to continue and prosecute an appeal already lodged. (*Kemball, J., dissenting*):—The appeal lodged by a convict abates on his death. The High Court, nevertheless, may call for and examine the record of the case with a view to revision and rectification, and may make such order thereon as it may consider just.—*Imperatrix v. Dongaji Andaji*, I. L. R., 2 Bom. 564.

AN APPEAL having been preferred to the High Court against a judgment of acquittal of the Court of Session, the persons who had been acquitted were arrested by the police and brought before the Magistrate, who illegally directed that they should be detained in custody pending the decision of the appeal. *Turner, Officiating C.J., and Pearson, J.,* were of opinion that the High Court had no power, as a Court of Revision, to interfere with the order. *Spankie and Oldfield, J.J., contra.*—*Reg. v. Gholam Ishmail and another*, I. L. R., 1 All. 1 (F. B.).

IN A case in which the Magistrate referred the proceedings to the High Court, with a recommendation that they should be set aside because the sentence was inadequate, it was held that it is not merely because circumstances occur to the Magistrate which would render necessary a more severe sentence or a different charge that the High Court should interfere. There must be matter on the record of the case showing that the charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence.—*Reg. v. Hurnath Singh*, 20 W. R. 22.

IN ACCORDANCE with previous rulings to the effect that a conviction which is, in fact, an adjudication in respect of an offence which has not been committed, is bad, it was held that the imposition of a daily fine in case the accused should not remove an obstruction, in addition to a substantive fine for making the obstruction, was illegal. The High Court has power to interfere in such a case as the above, and to annul what is illegal whilst passing a legal sentence.—*Kristodhone Dutt, Executor to the Estate of Shibkristo Daw, v. The Chairman of the Municipal Commissioners of the Suburbs of Calcutta*, 25 W. R. 6.

IN A case in which the accused caused the death of a woman by beating, the medical officer who held the *post-mortem* examination considered that death resulted from rupture of the spleen, but the Civil Surgeon said that no opinion of the cause of death could be formed. The accused having been convicted of causing grievous hurt, and sentenced to six months' rigorous imprisonment by the Deputy Magistrate, the Magistrate considered that the accused ought to have been committed to the Sessions on a charge of culpable homicide, but recommended that the High Court should enhance the sentence which had been passed to one of sufficient severity to meet the offence. *Held* that the High Court could not deal with the case in the mode suggested; but under s. 439, Code of Criminal Procedure, the Court annulled the conviction by the Deputy Magistrate, and directed that the accused should be committed to the Sessions on charges of culpable homicide and of grievous hurt.—*Reg. v. Hurish Pal*, 20 W. R. 63.

IN THE course of a serious riot one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased, praying the High Court to exercise its powers of revision: *Held* (1) that under s. 297 of the Code of 1872 the High Court may exercise its powers

of revision upon information in whatever way received; (2) that it was not intended that the powers given by cl. 1 of that section should be exercised only in the particular instances of error and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course to be taken in those particular cases; (3) that it is not a ground of revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge was not brought before him; (4) that the words "material error" in that section must be held to include error in the appreciation of evidence; and (5) that under cl. 1 of the section the High Court cannot set aside findings of fact except in case of an appeal from a conviction.—In the matter of Aurokiam, Petitioner, I. L. R., 2 Mad. 38.

CERTAIN persons were convicted by a Magistrate of the first class of assault, an offence punishable under s. 352 of the Penal Code. The case was brought to the knowledge of the High Court by the complainant preferring a petition to it, together with a copy of the Magistrate's order. This petition was laid before Straight, J., who, observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace, as provided by s. 106 of the Criminal Procedure Code, directed the Magistrate to summon such persons to show cause why they should not be required, under s. 107, Criminal Procedure Code, to enter into a bond to keep the peace. The Magistrate accordingly summoned such persons as directed, the summonses setting forth that they were issued "under the orders of the High Court." The Magistrate took evidence on behalf of such persons, and eventually made an order requiring such persons to enter into a bond to keep the peace. Such persons, though fully aware of the order made by Straight, J., applied to the High Court to set aside the order requiring them to enter into a bond to keep the peace, on the ground that the Magistrate had not proceeded of his own motion, but under the order of Straight, J., which was made without jurisdiction, and on the ground that the summonses had not set forth the report or information on which they were issued. *Held*, by Stuart, C.J., that inasmuch as Straight, J., when he made his order, represented the full authority and jurisdiction of the High Court, such order was final, and the application could not be entertained. *Held* by Pearson, Spankie, and Oldfield, JJ. (Spankie, J., doubting whether such order could be questioned), that the order of Straight, J., was one which he was competent to make as a Court of Revision. *Held* by Pearson and Spankie, JJ., that, inasmuch as such persons had not been in the slightest degree prejudiced by the defect in the summonses which were issued to them, such defect was not a ground on which to set aside the Magistrate's order requiring them to enter into a bond to keep the peace.—*Empress v. Muhammad Jafir and others*, I. L. R., 3 All. 545 (F.B.).

440. No party has any right to be heard either personally or by Act X., 1872, s. 297, last para. Optional with Court to hear parties. pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

441. When the record of any proceeding of any Presidency Ma- Act IV., 1877, s. 152. gistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

442. When a case is revised under this chapter by the High Court, Act X., 1872, s. 299, paras. 1 and 2. it shall certify its decision or order to the Court by which the finding, sentence, or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

High Court's order to be certified to lower Court or Magistrate.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Act X., 18th 2, ss. 72, 73, 74, 1 and 2, 74, para. 1. **443.** No Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Act X., 1872, ss. 72, para. 1, 76, para. 1. **444.** No Judge presiding in a Court of Session shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he had held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Act X., 1872, ss. 73, 438. **445.** Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person :

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Act X., 1872, s. 74, para. 2. **446.** Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both.

Act X., 1872, ss. 75, para. 1, 438, para. 2. **447.** When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

Act XI., 1874, s. 12, para. 1. **448.** When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall

448. Where any person committed to the High Court under section **Act XI., 1874,**

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

447 is charged with several offences, of which one is punishable with death or transportation for life, and the others with a less punishment, and the High Court considers that he should

not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

449. Notwithstanding anything contained in section 31, no Court **Act X., 1872,**

Sentences which may be passed by Court of Session.

of Session shall pass on any European British **s. 76.**

subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence

Procedure when Sessions Judge finds his powers inadequate.

which appears to be proved cannot be adequately punished by such a sentence, he shall record

his opinion to that effect, and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

450. If the Judge of the Sessions Division within which the offence **Act X., 1872,**

Procedure when Sessions Judge is not an European British subject.

is ordinarily triable is not an European British **s. 77.**

subject, the case shall be reported by the committing Magistrate for the orders of the highest Court of criminal appeal for the province within which such division is situate.

In British Burma the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the highest Court of criminal appeal.

451. In trials of European British subjects before a High Court or **Act X., 1872,**

Mixed jury for trial of European British subjects.

Court of Session, if, before the first juror is called and accepted, or the first assessor is ap-

pointed, as the case may be, any such subject requires to be tried by a **s. 78, para. 2.**

mixed jury, or by a mixed set of assessors, not less than half the number of the jurors or assessors shall be Europeans or Americans, or both Europeans and Americans. **Act X., 1875, s. 35.**

452. In any case in which an European British subject is accused **Act X., 1875,**

Trial of European British subject and native jointly accused.

jointly with a person not being an European **s. 36.**

British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Provided that, if the European British subject requires under sec- **Act X., 1875,**

When native may claim separate trial.

tion 451 to be tried by a mixed jury or by a **s. 37.**

mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

A PRISONER not being an European British subject, who is not charged jointly with a European British subject, is not entitled to be tried by a jury of which, at least, five persons shall be Europeans or Americans.—Reg. v. Lalubhai Gopal Dass and others, 1 L. R., 1 Bom. 232.

Act X., 1872,
s. 83.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate, and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry (if any) as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court, and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

A DEPUTY Magistrate ought to give an opportunity to a prisoner to plead that he is an European British subject. The mere statement of a prisoner that he is an European British subject, made before the Deputy Magistrate after the trial had been completed, cannot be acted on.—Clark v. Beane, 5 W. R. 53.

Act X., 1872,
s. 84.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried, or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

BEFORE an European British subject can be considered to have waived the privilege conferred upon him by s. 443, it must appear that his rights under that section have been distinctly made known to him, and that he must have been unable to exercise his choice and judgment whether he would or would not claim those rights. The provisions of s. 443, relating to the kind of Court which shall have jurisdiction and shall not have jurisdiction to enquire into a complaint or try a charge against an European British subject, constitute a privilege,—that is to say, they are not so much words taking away jurisdiction entirely, as words which confer on the British subject a right to be tried by a certain class of Magistrates and by no others, which right the Court enables him to give up. No person can, by waiver or

consent, enable a Magistrate or a Judge to try a case which he is disqualified to try by some circumstance not personal to the accused. *Queen v. Bholanath Sen* (I. L. R., 2 Cal. 23) distinguished. The waiver of privilege spoken of in s. 454 must be an absolute giving up of all the rights with reference to Chapter 33 of the Code of Criminal Procedure, which an European British subject has ; and the words "dealt with as such before the Magistrate" mean everything contained in the chapter, that is to say the tribunal having cognizance of the case, the procedure, and also the punishment to which the accused would be liable.—*In re Quiros* and another ; *Empress v. Allen* and others, I. L. R., 6 Cal. 83 ; 6 Cal. Law Rep. 463.

455. Where a person who is not an European British subject is Act X., 1872,
s. 85.

Trial under this chapter of person not an European British subject.

dealt with as such under this chapter, and does not object, the inquiry, commitment, trial, or sentence (as the case may be), shall not, by

reason of such dealing, be invalid.

456. When any European British subject is unlawfully detained Act X., 1872,
s. 81, para.
1, cl. 1.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at

the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

S. 456 refers to the detention of European British subjects only—not to natives of this country. In a case certain natives were tried and acquitted by the Sessions Court. An appeal having been preferred to the High Court against the judgment of acquittal, the persons who had been acquitted were arrested by the police and brought before the Magistrate, who illegally directed that they should be detained in custody pending the decision of the appeal. It was held by a majority that the High Court had no power, as a Court of Revision, to interfere with the order.—*Reg. v. Gholam Ishmail* and another, I. L. R., 1 All. (F. B.).

457. The High Court, if it thinks fit, may, before issuing such Act X., 1872,
s. 81, para.
1, cl. 2.

Procedure on such application.

order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and

grant or refuse such application ; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

458. The High Court may issue such orders throughout the Act X., 1872,
s. 81, para.
2.

Territories throughout which High Court may issue such orders.

territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor-General in Council may direct.

459. Unless there is something repugnant in the context, all enact- Act XXII.,
1870, ss. 2,
4.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

ments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply

to European British subjects, although such persons be not expressly referred to therein.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace, or on any Magistrate or Sessions Judge outside the Presidency-towns not being an European British subject.

A MAGISTRATE who is a Justice of the Peace, but who is not himself an European British subject, has no jurisdiction to try an European British subject for an offence punishable under a special law (*e.g.*, Act I. of 1859, the Merchant Shipping Act, s. 83), notwithstanding that he may have had jurisdiction under the special procedure prescribed in the special law.—*Mad. H. C. Pro.*, Dec. 18, 1873 ; *Weir*, p. 20.

Act X., 1872, s. 234, para. 1, cl. 2. **460.** In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

Act X., 1872 s. 242. **461.** Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and, in compliance with a claim made under section 460, is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Act X., 1872, s. 408, paras. 1, 2, and 3. **462.** When a trial is to be held before the Court of Session, in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner heretofore prescribed, as many European and American jurors as are required for the trial.

The Court shall also at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained :

Act X., 1872, s. 406, last clause. Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

463. Criminal proceedings against European British subjects, Act X., 1872, ss. 423, 424, para. 3.
 Conduct of criminal proceedings against European British subjects, &c. Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code. s. 87.

CHAPTER XXXIV.

LUNATICS.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind, and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing. Act X., 1872, ss. 423, 424, para. 3. Act IV., 1877, s. 194.

If such Magistrate is of opinion that the accused is of unsound mind, and consequently incapable of making his defence, he shall postpone further proceedings in the case.

THE test to determine whether a person who has committed an act which is charged against him as an offence was of unsound mind at the time of its commission is whether he knew that he was doing wrong.—*Reg. v. Jugo Mohun Malo*, 24 W. R. 5.

IF A Judge or Magistrate has doubts as to the sanity of a prisoner, he should not be content merely with questioning him, but should try the fact of his sanity or insanity by examining the Civil Surgeon, and by taking evidence from the village where the prisoner lived, in order to ascertain whether he was insane at the time he committed the alleged offence, or whether he became insane afterwards, or whether he were insane at all.—*Reg. v. Heera Poonja*, 1 Bom. H. C. Rep. 33.

IF A prisoner, insane and unable to make his defence at the time of his being brought up for trial, be nevertheless tried, the proceedings are irregular, and must be quashed, even although he be acquitted on the ground that he was insane at the time he committed the act for which he was put on his trial.—*Reg. v. Makhnu Chowdhry*, Cal. H. C., Sep. 9, 1865. So, too, if the Magistrate acquit him by reason of his insanity at the time of trial.—*In re Romon Audheekaree*, 10 W. R. 37.

WHEN an accused person is found to be insane before the completion of his trial, the Judge should postpone the trial, and report the case to the Lieutenant-Governor, instead of trying the accused when he is incapable of making his defence, and acquitting him on the ground that he committed the offence charged when he was incapable of knowing that he was doing wrong, and consequently that he has committed no offence under s. 84 of the Penal Code.—*Reg. v. Noorkhan Chowdhry* (Lunatic), 1 W. R. 11.

465 If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind, and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed. Act X., 1872, s. 425. Act X., 1875, s. 120.

Act XI., 1874, s. 39. The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

WHERE a Magistrate remanded a prisoner on account of his inability to make his defence from unsoundness of mind, his successor should take up the case under this section on the convalescence of the accused.—Reg. v. Rughooa, 6 W. R. 3.

IF A Judge or Magistrate has doubts as to the sanity of a prisoner, he should not be content merely with questioning him, but should try the fact of his sanity or insanity by examining the Civil Surgeon, and by taking evidence from the village where the prisoner lived, in order to ascertain whether he was insane at the time he committed the alleged offence, or whether he became insane afterwards, or whether he were insane at all.—Reg. v. Heera Poonja, 1 Bom. H. C. Rep. 33.

A SESSIONS JUDGE in his charge to the jury told them that in his judgment the accused was at the time of his trial exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time he committed the offence. Held that the issue as to whether the accused was of unsound mind at the time of the trial, and incapable of properly making his defence, was a preliminary issue to that put by the Sessions Judge, and should have been first submitted to the jury.—Reg. v. Doorjodhun Shamonto alias Deejohor, 19 W. R. 26.

It is altogether irregular to try, as a preliminary point, before proceeding with the trial, whether the prisoner was of unsound mind at the time of committing the offence. This is an issue, among others, on which the finding as to the guilt or innocence of the prisoner depended, and was therefore one for determination at the conclusion of the trial. The only circumstances under which the question of unsound mind should be preliminarily decided are those described in ss. 464 and 465 with the view of determining whether the prisoner is capable of making his defence.—S. N. A. Agra, Mt. Lougee, 1862, 53.

Act X., 1872, s. 426. 466. Whenever an accused person is found to be of unsound mind, and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance, when required, before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Act X., 1873, s. 121. Release of lunatic pending investigation or trial.

Act IV., 1877, s. 196.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Custody of lunatic.

WHERE a Magistrate has kept in custody an insane prisoner, and reported the case to Government, his successor, instead of striking off the case, is bound to resume the investigation.—Reg. v. Rughooa, 6 W. R. 3.

A PERSON was placed in a lunatic asylum under this section, and was detained there after he recovered his reason. It was held that his detention was wrongful, but not illegal.—*In re* Eldred, Hyde's Beng. H. C. Rep. 173, 1863.

THE authority of the Criminal Courts over an accused declared under this section to be of unsound mind ceases after the transmission of such accused to the place of safe custody appointed by the Local Government; and such authority can only be revived under the circumstances mentioned in s. 473.—*Empress v. Jaya Hari Kar*, I. L. R., 2 Cal. 356.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Act X., 1872, s. 427.
Act X., 1875, s. 122.
Act IV., 1877, s. 197.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court, considers him capable of making his defence, the inquiry or trial shall proceed.

Act X., 1872, s. 428.
Act X., 1875, s. 123.
Act IV., 1877, s. 198.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provision of section 464 or section 465, as the case may be.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Act X., 1872, s. 421, para. 1 and 2.
Act IV., 1877, s. 195.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Act X., 1872, s. 429.
Act X., 1875, s. 124.
Act IV., 1877, s. 199.

The fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 of the Penal Code, which provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.—Reg. v. Nobin Chunder Banerjee, 20 W. R. 70; 13 B. L. R. App. 20.

The following course should be pursued by Sessions Judges in the case of apparently insane persons charged with murder: The prisoner should be placed under the special care of the Civil Surgeon, who should be directed carefully to watch his state of mind, with a view to discover whether the prisoner was subject to recurring fits of insanity or light-headedness. The Civil Surgeon, after he has had the prisoner not less than thirty days under his charge, will notify to the Judge whether he has reason to believe that the prisoner is, or ever has been, subject to periodical fits

of madness, and the Judge will then take the evidence of the Civil Surgeon on oath, and forward the same with his opinion to the High Court.—Reg. v. Sheikh Mustafa, 1 W. R. 1.

A MAGISTRATE rightly commits for trial at the sessions a prisoner charged with murder, whom he finds to be sane at the time of the preliminary investigation, although he was insane when he committed the act. A Sessions Judge has no power to try a prisoner who has been committed for trial on no specific charge. When a prisoner is found to be insane at the time of his trial, the procedure applicable to his case is that prescribed by this chapter of the Code. A mere written certificate of a medical officer that a prisoner is of unsound mind and incapable of making his defence is not sufficient evidence of the prisoner's insanity. The medical officer should be called as a witness, and be personally and carefully examined.—Reg. v. Ram Rutton Dass, 9 W. R. 23.

Act X., 1872, s. 430. **471.** Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

Act X., 1875, s. 125. Person acquitted on such ground to be kept in safe custody.

Act IV., 1877, s. 200.

The Local Government may order such person to be confined in a lunatic asylum, jail, or other suitable place of safe custody.

THE following is a finding of acquittal laid down by the Calcutta High Court as a model: "The Court, concurring with the assessors, finds that G P did kill B M by striking him on the head with a club, but that, by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not, therefore, guilty of the offence specified in the charge, *viz.*, that he has committed culpable homicide not amounting to murder by causing the death of B M, and has thereby committed an offence punishable under s. 304 of the Penal Code; and the Court directs that the said G P be acquitted, and that, under the provision of s. 471 of the Code of Criminal Procedure, the said G P be kept in safe custody, pending the orders of the Local Government."—8 W. R., C. L., 19.

WHERE a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to s. 303, Penal Code, is that of death. The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing in that point from the jury, referred the case to the High Court. *Held* that, in a case of this kind, the High Court will not interfere without the very clearest proof that the jury were mistaken, and that the interest of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by the Code. On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to.—Reg. v. Doorjodhun Shamonto *alias* Deejobor, 19 W. R. 45.

Act X., 1872, s. 431. **472.** When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Act X., 1875, s. 127. Lunatic prisoners to be visited by Inspector-General.

Act IV., 1877, s. 202.

473. If such person is confined under the provisions of section 466, and such Inspector-General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic prisoner is reported capable of making his defence. Act X., 1872, s. 432.
Act X., 1875, s. 126.
Act IV., 1877, s. 201.

THE authority of the Criminal Courts over an accused declared to be of unsound mind ceases after the transmission of such accused to the place of safe custody appointed by the Local Government; and such authority can only be revived under the circumstances mentioned in this section.—*Empress v. Jaya Hari Kar*, I. L. R., 2 Cal. 365.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged. Act X., 1872, s. 433.
Act X., 1875, s. 128.
Act IV., 1877, s. 203.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Delivery of lunatic to the care of relative. Act X., 1872, s. 434.
Act X., 1875, s. 129.
Act IV., 1877, s. 204.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Act X., 1872, **476.** When any Civil, Criminal, or Revenue Court is of opinion
ss. 471, 477. **Procedure** in cases men- that there is ground for inquiring into any
Act X., 1875, tioned in section 195. offence referred to in section 195, and commit-
s. 135. ted before it or brought under its notice in the course of a judicial pro-
Act IV., 1877, ceeding, such Court, after making any preliminary inquiry that may be
s. 44, omit- necessary, may send the case for inquiry or trial to the nearest Magis-
ting last pa- trate of the first class, and may send the accused in custody, or take
ra. sufficient security for his appearance, before such Magistrate; and may
 bind over any person to appear and give evidence on such inquiry or
 trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the enquiry or trial to some other competent Magistrate.

WHERE a charge of theft was reported by the police to be false, it was held that the Magistrate ought first to have enquired into the charge of theft, and passed some orders upon it, before proceeding under s. 211 of the Penal Code to enquire into the offence of false charge.—*Bishoo Barik*, 16 W. R. 67.

WHERE a case is sent up for investigation by a Magistrate, it is competent for such Magistrate to discharge the accused, if, in his opinion, the evidence against the accused is not sufficient to warrant their committal to the Sessions Court.—*Reg. v. Pandurang Mayral and Ramkrishna Hari*, 5 Bom. H. C. Rep. 41.

To constitute the offence of preferring a false charge under s. 211 of the Penal Code, the charge need not be made before a Magistrate, nor need the charge have been fully heard and dismissed: it is enough if it is not pending at the time of trial.—*Reg. v. Subbanna Gaundan and others*, 1 Mad. H. C. Rep. 30.

It is not necessary that the preliminary enquiry should be conducted in the presence of the accused. All that the Court making the enquiry has to do is to satisfy itself that there are *prima-facie* grounds for sending the case for investigation to a Magistrate.—*Chota Sadoo Peadah v. Bhoobun Chuckerbutty*, 9 W. R. 3.

To constitute the offence of making a false charge under s. 211 of the Penal Code, it is enough that the false charge is made, though no prosecution is instituted thereon. *Reg. v. Subbanna Gaundan* (1 Mad. H. C. Rep. 30) followed. *Reg. v. Bishoo Barik* (16 W. R. 77) distinguished.—*Empress v. Abul Hasan*, 1 L. R., 1 All. 497.

A Civil Court may transfer a case to the Criminal Court for investigation without specifying the particular officer by whom it is to be investigated; and the deposition of the Civil Court officer setting forth the charge on which he transferred the case to the Criminal Court is a sufficient complaint.—*Reg. v. Madhab Chunder Misser*, 13 W. R. 45.

AN offence under s. 211 of the Penal Code includes an offence under s. 182. It is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211; see *Raffee Mahomed v. Abbas Khan* 8 W. R. 67.—*Bhokteram v. Heera Kolita*, 1 L. R., 5 Cal. 184.

THE Court must first make a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused; and, after being so satisfied, it must either commit the case, or send the case to the Magistrate for enquiry whether a committal should be made or not.—*Kaliprosunno Bagchee*, Petitioner, 23 W. R. 39.

A COMMITMENT for trial under the provisions of s. 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused, is not illegal, merely because the complaint which the accused made has not been judicially enquired into, but is based on the report of the police that the case was a false one.—*Empress v. Salik Roy*, I. L. R., 6 Cal. 582 ; 8 Cal. Law Rep. 255.

A DEPUTY Magistrate may dismiss a complaint without calling evidence, if in his judgment there is no sufficient ground for proceeding under it. Under the circumstances of this case, however, the High Court considered that the Deputy Magistrate should have made enquiries before charging the complainant with making a false charge under s. 211, Penal Code.—*Reg. v. Gour Mohun Singh*, 16 W. R. 44 ; 8 B. L. R. App. 11.

AN offence under section 193, Penal Code, being an offence in contempt of Court, cannot be tried by the Magistrate before whom such offence is committed. *Reg. v. Kultaran Sing* (I. L. R., 1 All. 129) and *Reg. v. Jagat Mal* (I. L. R., 1 All. 169) overruled. *Per Stuart, J.J.*—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of s. 487 of this Code.—*Empress v. Kashmirilal*, I. L. R., 1 All. 625 (F. B.).

A PETITION was presented to the Joint Magistrate charging the police with having made a false report of an investigation which they had been directed to make at the instance of the petitioner. The Joint Magistrate, after reading the police-report, rejected the petition, and directed the petitioner to be prosecuted under s. 211 of the Penal Code for having made a false charge. *Held* that the Joint Magistrate should not have made the order without first instituting an inquiry into the truth of the complaint.—*In re Choolhaie Telee*, 2 Cal. Law Rep. 315.

WHERE a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified merely on a perusal of a police-report, which has found a charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation.—*In re Russick Lal Mullick*, 7 Cal. Law Rep. 382.

BEFORE a person can be put upon his trial for making a false charge under s. 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the complaint made by him ; and such an opportunity should be afforded to him, if he desires to take advantage of it, not before the police, but before the Magistrate. Magistrates should clearly understand that whilst the police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency and credibility of such evidence when collected.—*Government v. Karimdad*, I. L. R., 6 Cal. 496 ; 7 Cal. Law Rep. 467.

AN INSTRUCTION to the Magistrate of the District by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it, to prosecute a person for giving false evidence before it in such a case, does not amount to sanction to a prosecution of such person for such offence within the meaning of s. 195 of this Code, that section supposing a complainant, or at least an application for sanction for a complaint. Where a Court thinks that there is sufficient ground for inquiring into a charge mentioned in s. 195, it should proceed under s. 476. Attention of the Court of Session in this case directed to *Reg. v. Baiju Lal* (I. L. R., 1 Cal. 450).—*Empress v. Gobardhun Das and another*, I. L. R., 3 All. 62.

THIS section deals with a more extended class of cases, *viz.*, all those mentioned in s. 195 of this Code, in which not merely a Civil Court, but any Court, civil or criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an enquiry ; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or, if it has not that power, or is not disposed to exercise it, it may send the case to a Magistrate having power to try, or commit for trial, the accused person for the offence charged.—*Empress v. Popat Nauth*, I. L. R., 4 Bom. 287.

UNDER this section a Judge has no power to send a case to a Magistrate, except when, after having made such preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground (i.e., ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge; and the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge of false evidence into which the Magistrate ought to enquire. In this case the Judge's order was held to be bad, because he had made no preliminary enquiry, and because it was too vague and general in its character.—*Reg. v. Baiju Lal and others*, I. L. R., 1 Cal. 450. But see the case of *Mutty Lal Ghose*, I. L. R., 6 Cal. 308, *infra*.

A MAGISTRATE before whom a complaint had been made, after examining the complainant, but without examining his witnesses, dismissed the complaint. Shortly afterwards the person accused applied to the Magistrate and obtained sanction to prosecute the complainant under s. 211 of the Penal Code, and proceedings were thereupon commenced before another Magistrate, who subsequently committed the original complainant to the Court of Session. No application was made that a further enquiry might be made, notwithstanding the order of dismissal. *Held* that the proceedings in the original complaint had been terminated in a regular manner, and therefore the order sanctioning the prosecution was not illegal by reason of the Magistrate not having examined the witnesses of the complainant.—*In re Gyan Chunder Roy*, I. L. R., 7 Cal. 208; 8 Cal. Law Rep. 267.

A CHARGE of burglary and theft having been preferred against two persons, the Magistrate, before whom the charge was laid, after comparing the petition of complaint with the papers submitted to him by the police, who had made an enquiry and reported the charge to be false, directed, without having taken the examination of the complainant, that the case should be struck out, and that proceedings should be instituted against the complainant under s. 182 of the Penal Code. Proceedings were accordingly taken, and the complainant was ultimately tried and found guilty of an offence under s. 211. On appeal it was held that the proceedings had been irregular, and should be quashed; that the Magistrate should be directed to re-open the enquiry into the charge of burglary and theft, first examining the complainant; and that, if after such examination, he should be of opinion that the charge was false, the appellant might be proceeded against under s. 211 of the Penal Code.—*In re Biyogi Bhagut*, 4 Cal. Law Rep. 134.

B CHARGED certain persons before a police-officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B on a charge of making a false charge of an offence—an offence punishable under s. 211 of the Penal Code—and convicted him of that offence. *Held* that as such false charge was not preferred by B before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 195 and 487 of the Code of Criminal Procedure were inapplicable, and such Magistrate was not precluded from trying B himself, nor was his sanction or that of some superior Court necessary for B's trial by another officer.—*Empress v. Kashmiri Lal* (I. L. R., 1 All. 625) distinguished. Observations by Stuart, C.J., on the careless manner in which the charge in this case was framed.—*Empress v. Baldeo*, I. L. R., 3 All. 322.

IF, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding, or their witnesses, have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such person under this section without any further enquiry than that which he has already held in his own Court. As a matter of discretion and propriety, it is right for a Court, before committing a person on a charge of perjury upon his own uncontradicted statement, to await the hearing of the appeal, where an appeal is pending, in the case in which he is charged with such perjury.—In the matter of *Mutty Lal Ghose*, I. L. R., 6 Cal. 308. In this case the High Court (Garth, C.J., and Maclean, J.) explained how the ruling in the case of *Baiju Lal and others*, I. L. R., 1 Cal. 450, had been somewhat misunderstood. From this ruling it appeared that a Civil or Criminal Court which had heard a case tried was not competent to institute proceedings against any of the parties

concerned in that case without first holding an inquiry, and calling on those parties to show cause why such proceedings should not be taken. But this was clearly a mistake.

A CHARGE laid against certain persons before the police having been reported false by that body, the person who made the charge complained to the Magistrate of the District, who directed a fresh investigation. The charge was again reported false. The complainant thereupon filed a petition, in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer. No further investigation having taken place, the complainant was ordered to be prosecuted under s. 211 of the Penal Code, and on trial was convicted and sentenced. On appeal to the High Court, it was held that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him. *Per Maclean, J.*—The proper principle which should guide a Magistrate is that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police-enquiry, he would be justified in proceeding against a person who has made a complaint to the police which has been found to be false; but, if a complaint is made, that complaint must be dealt with judicially. It is unfair even then to proceed against the complainant without hearing any witnesses whom he may wish to examine. *Per Mitter, J.* Although a Magistrate has power to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under s. 211 of the Penal Code should be granted.—*In re Chuckerodhur Potti*, 8 Cal. Law Rep. 289.

477. Subject to the provisions of section 444, a Court of Session Act X., 1872,

Power of Court of Session
as to such offences com-
mitted before itself.

may charge a person for any offence referred
to in section 195, and committed before it, or
s. 472, paras.
1 and 3.

brought under its notice in the course of a
judicial proceeding, and may commit, or admit to bail and try, such
person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of
any witnesses, for the purposes of the trial.

The High Court is competent to quash a commitment made by a Court of Ses-
sion under s. 477.—*Empress v. Lakshman Singh*, 1 L. R., 2 All. 398.

In a case of giving false evidence by making contradictory statements, a Court
of Session cannot, without making further enquiry, commit a person for trial, under
s. 477, when both contradictory statements are not made before it. By the words
“under its own cognizance” in the corresponding section of the Code of 1872 it is
meant to provide for a case where it is brought under the notice of the Court of
Session in the course of a judicial proceeding that the crime with which the party is to
be charged has been committed by him.—*Reg. v. Nomal*, 12 W. R. 69; 4 B. L. R. 9.

A PRISONER gave evidence on the trial of one Gaurkishor, and the Sessions Judge,
having discovered the evidence to be false, made a complaint against the prisoner
before the Magistrate, and was examined by him as a witness. The Magistrate com-
mitted the prisoner for trial under s. 193, Penal Code. The case came on before the
Sessions Judge. On the trial in the Sessions Court, the Sessions Judge was himself
sworn, and gave evidence as a witness, and put in and proved the depositions taken
before him. *Held* that he was a competent witness, and can give evidence in a case
being tried before himself, even though he laid the complaint, acting as a public officer;
provided that he has no personal or pecuniary interest in the subject of the charge;
and he is not precluded thereby from dealing judicially with the evidence of which
his own forms a part.—*Reg. v. Mukta Singh*, 4 B. L. R. 15.

478. When any such offence is committed before any Civil or Act X., 1872,

Power of Civil and
Revenue Courts to com-
plete investigation and
commit to High Court
or Court of Session.

Revenue Court, or brought under the notice
of any Civil or Revenue Court in the course
of a judicial proceeding, and the case is triable
exclusively by the High Court or Court of
Session, or such Civil or Revenue Court thinks
s. 474, paras.
1 and 2.

that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

Act X., 1872,
s. 476. For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate ; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII., and shall be deemed to have been held by a Magistrate.

L WAS charged by S with offences under ss. 193 and 218, Penal Code, and also accused of acts amounting to offences punishable under s. 466 with seven years' imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial charged under s. 218, and acquitted by the Court of Session. The Court of Session then, under s. 477, charged L with offences punishable under ss. 193, 195, 211, and 109 of the Penal Code, and committed him for trial : *Held* that such commitment was not bad, because it included the charge under s. 193, such an offence not being exclusively triable by a Court of Session.—*Empress v. Lakshman Singh*, 1 L. R., 2 All. 398.

THE power of a Civil Court to commit a case to the Court of Session, after completing the preliminary enquiry, is given by s. 478 of this Code, and is restricted to the class of cases provided in that section, *viz.*, where offences, exclusively triable by a Court of Session are committed before the Civil Court. S. 476 deals with a more extended class of cases, *viz.*, all those mentioned in s. 195, in which not merely a Civil Court, but any Court, Civil or Criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding any enquiry ; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or, if it has not that power, or is not disposed to exercise it, it may send the case to a Magistrate having power to try or commit for trial the accused person for the offence charged.—*Imperatrix v. Popat Nathu*, 1 L. R., 4 Bom. 287.

Act X., 1872,
s. 475. **479.** When any such commitment is made by a Civil or Revenue

Procedure of Civil Court Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate, or other Magistrate authorized to commit for trial ; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be together with the witnesses for the prosecution and defence.

Act X., 1872,
s. 435, para.
1. **480.** When any such offence as in described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody ; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Act IV., 1877,
s. 205.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

THE following is the subject-matter of each of the sections alluded to above :—

S. 175. Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.

S. 178. Refusing oath when duly required to take oath by a public servant.

S. 179. Being legally bound to state truth, and refusing to answer questions.

S. 180. Refusing to sign a statement made to a public servant when legally required to do so.

S. 228. Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

PERSISTING in putting irrelevant and vexatious questions to a witness after warning might amount to a contempt.—*Azeemoola v. The Crown*, Panj. Rec., No. 44 of 1867, Cr.

A PETITION to transfer a suit to another Court on the ground that justice was likely to miscarry if the case were retained was held not to amount to a contempt of Court.—*Crown v. Sirdar Buksh*, Panj. Rec., No. 34 of 1869, Cr.

PREVARICATION while giving evidence does not constitute the offence, under s. 228 of the Penal Code, of intentionally causing interruption to a public servant sitting in a judicial proceeding.—*Reg. v. Aubabin Bhivray*, 4 Bom. II. C. Rep. 6.

WHERE a sentence of imprisonment has been passed in default of payment of fine in a case of contempt, the Government is bound to provide the prisoner with rations in the same way as they are provided to other prisoners in the jail.—3 W. R. 21, C. L.

No conviction can be had under s. 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court.—*Reg. v. Chota Hurry Pramanick Tantee* and another, 15 W. R. 5.

REFUSING or neglecting to return direct answers to questions does not constitute the offence, under s. 228 of the Penal Code, of intentionally offering insult or causing interruption to a public servant sitting in a judicial proceeding.—*Reg. v. Pandu bin Vithoji*, 4 Bom. II. C. Rep. 7.

A CRIMINAL Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine.—*Panchanada Tambiran*, Petitioner, 4 Mad. II. C. Rep. 229.

AN appeal lies against an order of the Sessions Court imposing a fine upon a witness under s. 228 of the Penal Code for intentional insult to the Sessions Judge sitting in a stage of a judicial proceeding. Where the High Court were satisfied that the witness did not intend to insult the Judge, the order was set aside.—*Chappu Menon*, Appellant, 4 Mad. II. C. Rep. 146.

A JUDGE of a Small Cause Court in the Mofussil found a judgment-debtor guilty of resisting an officer of the Court in attaching property in execution of a decree, and fined him. It was held that the Judge acted without jurisdiction, as the section applies only to contempts committed in the presence of the Court, and that the Judge ought to have sent the judgment debtor for trial before a Magistrate.—*In re Mani Chandra Dass*, 2 B. L. R., A. C. J., 188.

WHERE, in punishment for contempt of Court, the procedure sanctioned by this section is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In a case not dealt with in the summary manner herein laid down, the offender must be tried by an officer other than the person before whom the offence was committed.—*Reg. v. Chunder Seekar Roy*, 12 W. R. 18 ; 5 B. L. R. 100.

Act X., 1872,
s. 435, paras.
2 and 3.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

A CRIMINAL COURT inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine.—*Panchanada Tambiran*, Petitioner, 4 Mad. H. C. Rep. 229.

Act X., 1872,
s. 436, paras.
1 and 2.

Act IV., 1877,
s. 206.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.

New.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

Act X., 1872,
s. 437.

Act IV., 1877,
s. 207.

484. When any Court has, under section 480, adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Act X., 1872,
ss. 356, 357.

Act X., 1875,
s. 89.

Act IV., 1877,
s. 111.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to

simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable. Act X., 1872, s. 268.

The provisions of Chapter XXXI. shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by an officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or in the Presidency-towns, to the High Court. New.

487. Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding. Act X., 1872, s. 473.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

The prohibition in this section is a personal prohibition.—I. L. R., 1 Mad. 305.

The above section, which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under ch. x. of the Penal Code, but extends to all contempts of Court.—Reg. v. Parsapa Mahadevapa, I. L. R., 1 Bom. 339.

THE offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given. This offence, being an attempt to pervert the proceedings of a Court to an improper end, is a contempt of its authority.—*Reg. v. Navranbeg Dulabeg*, 10 Bom. H. C. Rep. 73.

AN offence under s. 211 of the Penal Code includes an offence under s. 182. It is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211; see *Raffee Mahomed v. Abbas Khan*, 8 W. R. 67.—*Bhokteram v. Heera Kolita*, 1 L. R., 5 Cal. 184.

WHERE a settlement-officer, who was also a Magistrate, summoned, as a settlement-officer, a person to attend his Court, and such person neglected to attend, and such officer, as a Magistrate, charged him with an offence under s. 174, Penal Code, and tried and convicted him on his own charge, it was held that such conviction was, with reference to s. 487 of this Code, illegal.—*Empress v. Sukhari*, 1 L. R., 2 All. 405.

A PRISONER who had made certain contradictory statements on oath before a Magistrate and a Court of Session respectively was convicted by the same Court of Session on a charge, in the alternative, of giving false evidence either before the Magistrate or before the Court of Session. *Held* that the Court was precluded by s. 487 from trying the charge.—*Sindriah (Prisoner), Appellant, v. The Queen*, 1 L. R., 3 Mad. 254.

AN offence under section 193, Penal Code, being an offence in contempt of Court, cannot be tried by the Magistrate before whom such offence is committed. *Reg. v. Kultaran Sing* (1 L. R., 1 All. 129) and *Reg. v. Jagat Mul* (1 L. R., 1 All. 162) overruled. *Per* Stuart, C.J.—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of s. 487 of this Code.—*Empress v. Kashmiri Lal*, 1 L. R., 1 All. 625 (F.B.).

IN a case of giving false evidence by making contradictory statements, a Court of Session cannot, without making further enquiry, commit a person for trial under s. 477, when both contradictory statements are not made before it. By the words "under its own cognizance" in the corresponding section of the Code of 1872 it is meant to provide for a case where it is brought under the notice of the Court of Session in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him.—*Reg. v. Nomal*, 12 W. R. 69; 4 B. L. R. 9.

GIVING false evidence is an "offence committed in contempt of the authority" of a Court. Where the accused was, by a Magistrate, first class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or Joint Sessions Judge, it was held that the commitment could not be quashed, there being no error in law, and the case must therefore be transferred for trial to another Court of Session. In such a case as the above the better course would be for the Magistrate to try the case himself; and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence.—*Reg. v. Gaji Kom Ranu*, 1 L. R. 1 Bom. 311.

B CHARGED certain persons before a police-officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B on a charge of making a false charge of an offence—an offence punishable under s. 211 of the Penal Code—and convicted him of that offence. *Held* that as such false charge was not preferred by B before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 195 and 487 of the Code of Criminal Procedure were inapplicable, and such Magistrate was not precluded from trying B himself, nor was his sanction or that of some superior Court necessary for B's trial by another officer. *Empress v. Kashmiri Lal* (1 L. R., 1 All. 625) distinguished. Observations by Stuart, C.J., on the careless manner in which the charge in this case was framed.—*Empress v. Bakdeo*, 1 L. R., 3 All. 322.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. If any person, having sufficient means, neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class, may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Act X., 1872,
s. 536.
Act IV., 1877,
s. 234.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month :

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section, notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Proviso.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that, without sufficient reason, she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summon-cases.

IF ANY Magistrate, not empowered so to act, passes any order in a maintenance-case, his proceedings are void.—s. 530, cl. 2.

It is illegal to pass an order for the maintenance of an unborn child.—*Mussamut Larlee v. Bunsee Ditchit*, 3 N. W. P. 70.

A NIKA-MARRIAGE falls within the purview of ss. 494 and 495 of the Penal Code. *Reg. v. Jadoo Mussulmanee and Beedby Bewah*, 6 W. R. 60.

CASES under this section are not to be tried summarily, but require the procedure laid down in summons-cases.—*Harkishore Melo*, 24 W. R. 61.

MAINTENANCE cannot be given for children which a husband is willing to support, provided they live under his own roof.—Panchuda, &c., 8 B. L. R. App. 11.

THIS section does not deprive a wife of any remedy which she otherwise would have had in the Civil Courts.—Lalla Gopeenath v. Mussamut Jeetun Roer, 6 W. R. 57, Civ. Ca.

AN ORDER of maintenance is a judicial proceeding of a Criminal Court, and is not appealable, but is subject to revision by the High Court.—Reg. v. Thaku bin Ira, 5 Bom. H. C. Rep. 81.

IMPRISONMENT cannot be awarded in anticipation of default to an order made for payment of a monthly maintenance.—Mad. H. C. Pro., July 28, 1870, and April 26, 1871; Weir, p. 16.

THE inability of a husband and wife to agree to live together without proof of cruelty is no ground for decreeing a separate maintenance to the wife.—Mussamut Jesmut v. Shoojaut Ali, 6 W. R. 59.

THE question whether the evidence before the Magistrate was sufficient to enable him to make an order was a matter for him, not for the High Court, to consider.—*In re* John Meiselback, 17 W. R. 49.

AN ORDER directing the payment of maintenance in arrears from a certain date is illegal. The allowance can only be made payable from the date of the order.—Mad. H. C. Pro., July 30, 1875; Weir, p. 22.

AN order made by a Magistrate under s. 488 must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case.—Lutpotee Domin v. Tikha Moodoi, 8 W. R. 67.

A MAGISTRATE has no authority to demand security in maintenance-cases, in order to provide, by anticipation, for any possible failure to pay a monthly allowance under this section.—Kanoos Sandagar v. Alabundee, 24 W. R. 72.

UNDER s. 488 the Magistrate may *both* levy the amount due, *and* order the defaulter to be imprisoned for a term not exceeding one month for each allowance remaining unpaid.—Mad. H. C. Pro., Nov. 11, 1874; Weir, p. 47.

A MAGISTRATE is nowhere empowered under this section to issue an order for alimony to unmarried women in a state of pregnancy, nor to any illegitimate child prospectively from the day of its birth.—Tikha Moodai, 8 W. R. 67.

AN ORDER fixing a sum for the maintenance of a child, containing a prospective order for an increase of the amount awarded as the child grows older, is unauthorized by the law.—Mussamut Munglo v. Jumna Dass, 2 N. W. P. 454.

THE nika form of marriage is well known and established among Mahomedans. The issue of a nika-marriage would be legitimate under the Mahomedan law.—Sheikh Moneerooddeen v. Ramdhun Bajeekur and others, 18 W. R. 28.

WHERE there is no proof of adultery or habitual cruelty on the part of the husband, a wife, who refuses to live with her husband, cannot claim separate maintenance.—Mussamut Goorditta v. Khan Chund, Panj. Rec., No. 30 of 1867, Cr.

BEFORE an order for the maintenance of a wife or child can be passed against a person, the charge must be legally proved against him, the words "due proof" in this section meaning legal proof on oath.—Gonda v. Pyari Dass Gossain, 13 W. R. 19.

IN DETERMINING questions under this chapter as to the maintenance of wives and families in certain cases, a Magistrate has no power to enter into any question as to the lawful guardianship of a child.—Lal Dass v. Nikunja Vaisyani, 1. L. R., 4 Cal. 374.

WHEN a wife obtains a decree for a judicial separation on the ground of her husband's cruelty and adultery, and there is nothing to impeach her own conduct, the Court will allow her to have the custody of the children.—Macleod v. Macleod, 6 B. L. R. 318.

AN ORDER directing a husband to pay his wife a monthly sum for the maintenance of his children, she not being entitled to maintenance from him, and he being willing to support his children in his own house, is illegal.—Pachoo Dass v. Sremotee Soodhamonee, 16 W. R. 72.

WHERE the wife refused to live with her husband unless they dwelt together apart from the husband's mother, who "would not let the wife live in peace," it was held that the wife was not entitled to maintenance.—*Mussamut Mulka v. Ahmed*, Panj. Rec., No. 21 of 1870, Cr.

IT is open to a husband upon whom an order to make an allowance for the maintenance of his wife has been made, to prove that his wife is living in adultery, and upon such proof a Magistrate is justified in cancelling the order.—*Chaku v. Ishwar Bhudar*, 8 Bom. H. C. Rep. 124.

WHERE a duly-empowered Magistrate has decided a matter under s. 488 of this Code by dismissing the application after hearing the evidence offered, the District Magistrate is not competent to entertain the complaint *de novo*.—In the matter of *Jamote v. Gadalo Kamar*, 1 Cal. Law Rep. 89.

THE Civil Court has no power to set aside alimony-orders issued by a Magistrate, nor is a wife, because she has under this section received support, debarred from bringing a civil action for maintenance.—*Mussamut Lutchemina*, S. D. A., Agra, 1862, 158; *Lala Gopeenath*, 6 W. R. 57.

THE rejection of an application for maintenance made by the wife of a Christian, who had relapsed into Hinduism, and married a second wife, is not warranted by the ruling of the Madras High Court of 8th November 1866, 3 Mad. H. C. Rep. App. 7.—See Ruling, Feb. 18, 1868, 4 Mad. H. C. Rep. App. 3.

A MAHOMEDAN wife by a nika-marriage is entitled to maintenance under this section, but it does not apply to the so-called marriages among Shiabs, which are temporary, and are really only concubinage. Maintenance cannot be ordered for an unborn child.—*Bunsee Ditchit*, N. W. P., March 17, 1871.

WHERE a Magistrate ordered a person to make a monthly allowance for the support of an illegitimate child, it was held by the majority of the Court that there was no conviction of an offence, and that consequently no appeal lay.—*Reg. v. Golan Hossein Chowdhry*, 7 W. R. 10; 2 I. J. N. S. 88 (F. B.).

A DIVORCED Mahomedan wife is entitled to maintenance under s. 488 during the *iddat*, or period of probation. An order of maintenance for a time subsequent to the expiration of the *iddat* is illegal. If she is pregnant, she would be entitled to maintenance during gestation.—*Mad. H. C. Judgment*, Dec. 2, 1879.

THE levy of accumulated arrears of maintenance by a single warrant is not illegal. The words, "not exceeding one month for each month's allowance remaining unpaid," seem to contemplate the very case of arrears of more than one month. Were it otherwise, the scale would be unnecessary.—7 Mad. H. C. Rep. App. 39.

ALTHOUGH by Hindu law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence, or other justifying cause, she is compelled to live apart from him.—1 L. R., 2 Bqm. 634.

AN ORDER made by a Magistrate directing a Muhammadan husband to pay a sum monthly for the maintenance of his wife does not deprive such husband of his inherent right to divorce his wife, and, after such divorce, the Magistrate's order can no longer be enforced.—*In re Kasam Pirbhai and his wife Hirbai*, 8 Bom. H. C. Rep. 95.

A DECISION of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot preclude either the woman from applying, or a Magistrate from making an order, under s. 488 of this Code, for the maintenance of their illegitimate daughter.—*John Meiselback*, Petitioner, 17 W. R. 49.

A CIVIL Court has no jurisdiction to pass a declaratory decree as to the paternity of an illegitimate child; and, even if it had, it would not affect the order of the Magistrate under this chapter. The High Court alone has power to interfere, as a Court of Revision, with the order of the Magistrate.—*Subad Domui v. Katiram Dome*, 20 W. R. 58.

A WARRANT may be issued for (even if it were for fifteen months) the recovery of arrears of maintenance, though a warrant is permissible on *every* breach of the order to pay maintenance. The result of issuing it for an aggregate of payments is that *one month's* imprisonment would alone be awardable in default.—*Mad. H. C. Pro.*, April 19, 1871; *Weir*, p. 46.

WHERE the Magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and directed that the defendant be imprisoned rigorously for the term of fifteen days for every breach of the order, the High Court quashed the latter part of the order as irregular and bad in substance.—*Ruling*, July 28, 1870, 5 *Mad. H. C. Rep.*, App., 34.

A WOMAN of the Ját caste applied for an order of maintenance. As she had only gone through the ceremony of *karao* with her alleged husband, the Joint Magistrate rejected her application. His order was set aside, and it was held that a *karao* marriage among the Játs was valid, and that the offspring of such unions were entitled to inherit.—*Reg. v. Bahadur Singh*, 4 *N. W. P.* 128.

THERE is nothing in the Code which would warrant a Magistrate in ordering a mother to surrender her illegitimate child to its father, although such child be of the age of maturity. A refusal by the mother to make over the custody of the child in such a case would be no ground for stopping an allowance previously ordered.—*Lal Das v. Nikunja Vaisyani*, 1 *L. R.*, 4 *Cal.* 374.

IN a case under this chapter the defendant was summoned to appear before a Magistrate on a certain day, but the summons did not specify the place of appearance. *Held* that the Magistrate ought not to have passed an *ex-parte* order in the defendant's absence, as there was no failure to appear, because no place was specified at which the petitioner was to appear.—7 *Mad. H. C.*, Nov. 30, 1874.

WHERE a Criminal Court ordered a husband to pay a sum of money monthly towards the maintenance of his wife and children, and a Civil Court subsequently, on the suit of the husband for restitution of conjugal rights, gave the husband a decree, it was held that the order of the Criminal Court ceased to have any effect from the date of the decree of the Civil Court — *Lutpottee v. Tikka Moodai*, April 2, 1870; *High Court*, 13 *S. W. R.* 52.

IN a case in which a Magistrate made an order directing the husband to pay a monthly sum for the maintenance of his wife, the High Court set aside the order, on the ground that it appeared that the husband had not been called upon to maintain the wife, who had, up to that time, lived with her father, and that the father had refused to let the wife live with her husband without receiving money from him.—*Mussamut Souree v. Jitun Sonar*, 22 *W. R.* 30.

UNDER a protection-order granted by the Insolvent Court under s. 13 of the Insolvent Act (11 and 12 *Vic.*, c. 21), an insolvent is protected from arrest or imprisonment in respect of arrears due for maintenance ordered by a Presidency Magistrate when such arrears have been included in his schedule. *Quære*.—Whether the protection applies to arrears of maintenance accruing due subsequently to the making of the schedule?—*Toki Bibee v. Abdool Khan*, 5 *Cal. Law Rep.* 458.

WHERE defendant was called on to show cause against an order of maintenance passed against him, and he divorced his wife (the plaintiff) in the presence of the Court, it was held that, even if such divorce made such an alteration in the circumstances as to justify the Court in altering the order on the application of the husband, yet the defendant would not be relieved of his liability of maintaining his wife from the time the order was passed till the date of divorce.—*Nepoor Aurut v. Jurui*, 19 *W. R.* 73.

IF a Magistrate is otherwise competent to decide a case of maintenance, he is not without jurisdiction, because he may not have been empowered to take cognizance of offences without complaint, the matter of such case not being an offence. The fact that the man against whom the order for maintenance was passed was a European British subject, and resident in another district, and that a similar application had been rightly or wrongly dismissed in that district for want of jurisdiction, was held to be no bar to jurisdiction.—*In re W. B. Todd*, 5 *All.* 237.

A WIFE declined to live with her husband on the ground of cruelty, and the Magistrate, after satisfying himself as to the truth of the complaint, directed the husband to make a monthly allowance to her through the Court. The High Court held that this section did not authorize a Magistrate to entertain applications for separate maintenance, on the ground of ill-treatment from wives whose husbands have not neglected or refused to maintain them, but who have, of their own accord, left their husband's house and protection, and to order allowances to be paid to such wives on evidence of ill-treatment.—*In re Thompson*, 6 All. 205.

A MAGISTRATE of the first class has, as such, power to pass an order under the provisions of s. 488 of this Code, notwithstanding he may not be empowered to take cognizance of offences without complaint. The petitioner, a resident of Cawnpur, was summoned to Allahabad to answer an application for maintenance of his children. He was ordered to make them a monthly allowance. A somewhat similar application had been made at Cawnpur, but was rejected on the ground of jurisdiction. *Held* that the jurisdiction of the Magistrate who disposed of the case was not barred by the circumstance of the petitioner being resident at Cawnpur, or of the former application having been rejected.—*In re W. B. Todd*, 5 N. W. P. 137.

A PRESIDENCY Magistrate is competent to stay an order for maintenance and to refuse to issue his warrant, and to try all questions raised before him which affect the right of a woman to receive maintenance. There can be no distinction raised between a dissolution of marriage obtained under the Indian Divorce Act and a dissolution obtained under the Muhammadan law. It is only on proof of the existence of the relationship of husband and wife that a Magistrate can make an order granting maintenance to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section.—*Abdur Rohoman and others v. Sakhina and others*, *Sobhan v. Shubraton*, *Ossuff v. Shama*, I. L. R., 5 Cal. 558.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Act X., 1872
s. 537.
Act IV., 1877
s. 235.

A PRESIDENCY Magistrate is competent to stay an order for maintenance and to refuse to issue his warrant, and to try all questions raised before him which affect to right of a woman to receive maintenance. There can be no distinction raised between a dissolution of marriage obtained under the Indian Divorce Act and a dissolution obtained under the Muhammadan law. It is only on proof of the existence of the relationship of husband and wife that a Magistrate can make an order granting maintenance to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section.—*Abdur Rohoman and others v. Sakhina and others*, *Sobhan v. Shubraton*, *Ossuff v. Shama*, I. L. R., 5 Cal. 558.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian (if any) or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

Act X., 1872
s. 538.
Act IV., 1877
s. 36.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*.

491. Any of the High Courts of Judicature at Fort William, Madras, and Bombay, may, whenever it thinks fit, direct—

Act X., 1872
s. 82.
Act X., 1875,
s. 148.

(a) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law ;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial, or to be examined touching any matter pending before such Court-martial or Commissioners respectively ;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III. of 1818, Madras Regulation II. of 1819, or Bombay Regulation XXV. of 1827, or the Acts of the Governor-General in Council No. XXXIV. of 1850 or No. III. of 1858.

IN THE case of *Amir Khan*, 6 B. L. R. 392, Norman, J., held that the High Courts possessed the power of issuing writs of *habeas corpus* into the mufassal not only in relief of European British subjects, but also on behalf of others. On another application in the matter of the same prisoner, 6 B. L. R. 456, the same Judge ruled that the High Court had no power to issue a writ of *mainprise*.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Act X., 1872, **492.** The Governor-General in Council or the Local Government
ss. 57, 58. Power to appoint Public Prosecutors. may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers, to be called Public Prosecutors.

Act X., 1872, In any case committed for trial to the Court of Session, the District
s. 202, para. 2. Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case,

493. The Public Prosecutor may appear and plead without any written authority before any Court in which **Act X., 1872,**

Public Prosecutor may plead in all Courts in cases under his charge.

person instructs a pleader

Pleaders, privately instructed, to be under his direction.

any case of which he has charge is under inquiry, trial, or appeal; and, if any private person prosecutes in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

s. 60.

AN ADVOCATE of the High Court may appear on behalf of the prosecution in the Court of Session and conduct the prosecution without being specially empowered by the Magistrate of the district for that purpose.—Gungadhur Sircar, Petitioner, 23 W. R. 14.

WHETHER or not a private complainant is permitted, under s. 495 of this Code, to conduct a case as prosecutor, he may instruct Counsel, who shall be entitled to appear, under No. 7, Chapter XL of the Bombay High Court Rules, and the Public Prosecutor may thereupon avail himself of the Counsel's services. The Public Prosecutor may always avail himself of the services of Counsel retained by a private individual, and, in so doing, he does not deprive himself of the management of the case. Where the assistance of Counsel has once been accepted, that assistance is not excluded at the stages of the trial—summing-up by prosecutor and his reply.—*In re Narayan M. Pendshi*, 11 Bom. H. C. Rep. 102.

The following important observations were made by Westropp, C.J., on the duties of the Public Prosecutor: "It has been well said by a learned Judge, 'The Counsel for the prosecution has most accurately conceived his duty, which is, to be assistant to the Court in the furtherance of justice, and not to act as Counsel for any particular person or party.' He should not, by statement, aggravate the case against the prisoners, or keep back a witness because his evidence may weaken the case for the prosecution. His only object should be to aid the Court in discovering truth. He should avoid any proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for, or grasping at, conviction."—*Reg. v. Kasinath Dinkar and two others*, 8 Bom. H. C. Rep. 126 (F. B.).

494. Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court, in cases tried by jury **Act X., 1872,**

Effect of withdrawal from prosecution.

before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(a) if it is made before a charge has been framed, the accused shall be discharged;

(b) if it is made after a charge has been framed, or when, under this Code, no charge is required, he shall be acquitted.

s. 61.

495. Any Magistrate inquiring into or trying any case may permit any person other than an officer of police below **Act X., 1872,**

Permission to conduct prosecution.

the rank of Police Inspector to conduct the prosecution; but no person, other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

s. 59.

Act XI., 1874

s. 8.

Act IV., 1877

s. 129.

Any person conducting the prosecution may do so personally or by a pleader.

With the exception of the Advocate-General, Standing Counsel, Government Solicitor, or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, can claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate.—*Empress v. Butto Kristo Dass*, 1 L. R., 6 Cal. 59.

CHAPTER XXXIX.

OF BAIL.

Act X., 1872, **496.** When any person, other than a person accused of a non-bail-
ss. 128, para. 2, 194, para. 2, 204, para. 1, 388, 393. able offence, is arrested or detained without
Act IV., 1877, warrant by an officer in charge of a police-
ss. 70, 74. station, or appears or is brought before a Court, and is prepared at any
time while in the custody of such officer or at any stage of the proceed-
ings before such Court to give bail, such person shall be released on
bail: Provided that such officer or Court, if he or it thinks fit, may,
instead of taking bail from such person, discharge him on his executing
a bond without sureties for his appearance as hereinafter provided.

BAIL can be demanded only in cases where further enquiry is pending, and the accused has not been discharged. It should not be taken on the chance of evidence turning up.—*Ram Lall Tewary v. Soopha Ram*, 10 W. R. 34; 1 B. L. R. 26, Short Notes.

WHERE a defendant was bound over to appear on one particular day only, and not on any subsequent day until the case was closed, and did appear on that day, but the case was not called on, and at the end of the day went away, and did not return the next day when the case was called on for hearing, it was held that he had fulfilled the condition of his recognizances, and that the forfeiture thereof for his non-appearance the second day was illegal.—*Mad. H. C. Rulings*, April 9, 1869; *Mad. H. C. Rep. App. 44.*

Act X., 1872, **497.** When any person accused of any non-bailable offence is arrest-
ss. 128, para. 1, 194, para. 2, 389. ed or detained without warrant by an officer in
Act IV., 1877, charge of a police-station, or appears or is
s. 71. brought before a Court, he may be released on
bail, but he shall not be so released if there appear reasonable grounds
for believing that he has been guilty of the offence of which he is ac-
cused.

If it appears to such officer or Court at any stage of the investigation, inquiry, or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Act X., 1872, **498.** The amount of every bond executed under this chapter shall
ss. 390, 508. be fixed with due regard to the circumstances
Act X., 1875, of the case, and shall not be excessive; and the
s. 136. High Court or Court of Session may, in any case, whether there be au

appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient, shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

Act X., 1872,
s. 391.
Act IV., 1877,
s. 72.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session, or other Court to answer the charge.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer, on receipt of the order, shall release him.

Act X., 1872,
s. 394.
Act IV., 1874,
s. 73.

Nothing in this section, section 496, or section 497, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Act X., 1872,
s. 392.
Act IV., 1877,
s. 75.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

Act X., 1872,
s. 395.
Act IV., 1877,
s. 76.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. Whenever, in the course of an inquiry, a trial, or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session, or the High Court, that the examination of a witness is necessary for the ends of justice, and that

Act X., 1872,
s. 330, para.
1 and 2.
Act X., 1875,
s. 76, para.
1.

When attendance of witness may be dispensed with.

Act IV., 1877, s. 157. the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense

Issue of commission, and with such attendance, and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

THE High Court refused to issue a commission in a criminal case, on the ground that such a course would be unsatisfactory and dangerous to the interests of the prisoner.—*Empress v. Connell*, 1 L. R., 8 Cal. 896.

THE evidence of a witness taken upon commission is not admissible in a criminal trial held before the High Court, unless it can be shown that such evidence was so taken upon an order made by that Court, or unless it is admissible under s. 33 of the Evidence Act.—*Empress v. Dabee Pershad*, 1 L. R., 6 Cal. 532.

Act XI., 1874, s. 35, para. 1. **504.** If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Act X., 1872, s. 330, para. 4. **505.** The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

Act X., 1872, s. 330, para. 5. **506.** Whenever, in the course of an inquiry or a trial, or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence

Power of Provincial Sub-ordinate Magistrate to apply for issue of commission.

is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

507. After any commission issued under section 503 or section 506 Act XI., 1874, s. 35, last para. has been duly executed, it shall be returned, together with the deposition of the witness Act X., 1875, s. 76, para. 6. examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition, shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

508. In every case in which a commission is issued under section N. Y. Crim. 503 or section 506, the inquiry, trial, or other Adjournment of enquiry or trial. proceeding, may be adjourned for a specified time reasonably sufficient for the execution and return of the commission. Pro. Code, s. 708.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. The deposition of a Civil Surgeon or other medical witness, Act X., 1872, s. 323, Deposition of medical taken and attested by a Magistrate in the Act X., 1875, s. 71, presence of the accused, may be given in evidence in any inquiry, trial, or other proceeding under this Code, Act IV., 1877, s. 152. although the deponent is not called as a witness.

Power to summon medical witness. The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

A LETTER of a medical officer expressing an opinion is not evidence.—Reg. v. Kaminee Dasse, 12 W. R. 25.

THE substance of a report from a subordinate medical officer, being an expression of concurrence by his superior, cannot be read in evidence.—Chintamonee Nye, Petitioner, 11 W. R. 2.

510. Any document purporting to be a report under the hand of Act X., 1872, s. 325, para. 1. Report of Chemical the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or Act X., 1875, s. 72. thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence Act IV., 1877, s. 153. in any inquiry, trial, or other proceeding under this Code.

THE original report of the Chemical Examiner bearing his signature, and not a copy of the report, should be put in evidence.—Reg. v. Bishumbhur Dass, 15 W. R. 49; 6 B. L. R. App. 122.

Act X., 1872, ss. 326, 515, last clause. **511.** In any inquiry, trial, or other proceeding under this Code, a Previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

Act X., 1875, s. 119. (a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

EXCEPT under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.—*Roshun Doosadh and two others v. The Empress*, 1. L. R., 5 Cal. 768.

Act X., 1872, s. 327. **512.** If it be proved that an accused person has absconded, and Act X., 1875, s. 74. Record of evidence in that there is no immediate prospect of arresting absence of accused. him, the Court competent to try or commit for Act IV., 1877, s. 155. trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable.

UNDER s. 512 the witnesses for the prosecution should be examined in the presence of the accused, when practicable, notwithstanding that their statements have been previously recorded in his absence.—*Reg. v. Bocha Chowkeedar*, 22 W. R. 33.

UNDER s. 33 of the Evidence Act, depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. Where s. 512 of this Code does apply, it should be shown that, when the former deposition was taken, the accused had absconded, and after due pursuit could not be arrested.—*Reg. v. Etwarce Dharee*, 21 W. R. 12.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Act X., 1872, s. 399. **513.** When any person is required by any Court or officer to execute a bond, with or without sureties, such Act X., 1875, s. 139. Deposit instead of recognition. Court or officer may, except in the case of a Act IV., 1877, s. 80. bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class, or, when the bond is for appearance before a Court, to the satisfaction of such Court, that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not

Act X., 1872, ss. 396, 397, 398, paras. 1 & 2, 502, & 7, 503, 514. Act XI., 1874, ss. 37, 44. Act X., 1875, ss. 137, 138. Act IV., 1877, ss. 77, 78, 79, 228, 229.

If sufficient cause is not shown, and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid, and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may, at its discretion, remit any portion of the penalty mentioned, and enforce payment in part only.

BEFORE their recognizances are escheated for non-attendance, a prosecutor or his witnesses should be allowed an opportunity of justifying their default.—11 W. R. 36.

WHERE the penalty under a recognizance-bond has been forfeited, neither the Magistrate nor the High Court has power to reduce the amount of the penalty.—*In re Nanki Hazi*, 8 Cal. Law Rep. 72.

FROM the use of the terms, "whenever it is proved," *prima-facie* proof, by the taking of evidence, is necessary before proceedings can be taken under this section.—*In re Hariram Birbhan*, 11 Bom. 170.

THE High Court has no power to reduce the amount of recognizances which have been forfeited, but in a case of hardship the matter should be referred to Government.—*Empress v. Nural Huqq and another*, 1 L. R., 3 Cal. 757; 2 Cal. Law Rep. 408.

WHERE the terms of a bond to keep the peace are general, the recognizances may be forfeited on any breach of the peace, whether the assault be committed against the person on whose charge the bond was originally taken or not.—*In re Jahu Bux*, 15 W. R. 14.

A MAGISTRATE has no jurisdiction to call on a person who has entered into a recognizance-bond to pay the penalty or shew cause why he should not do so, without previous *prima-facie* proof, by which is meant evidence on oath, that it has been forfeited.—*In re Hariram Birbhan*, 11 Bom. H. C. Rep. 170.

A MAGISTRATE is not justified in forfeiting a recognizance, unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause why the recognizance should not be forfeited has been issued.—*Navin Chundra Dutta*, 1 L. R., 4 Cal. 865.

A EXECUTES, in District T, a recognizance to keep the peace towards B. A was afterwards convicted in District S of having assaulted B in that district. *Held* that A had forfeited his recognizance, and the Magistrate in District T could proceed against him under this section.—*Reg. v. Sham Sundur Chowdry*, 2 B. L. R. 11.

BEFORE a warrant can issue attaching the property of a surety, he should be called on to shew cause why he should not pay the penalty mentioned in his bond, and it must appear clearly on the face of the record that he had such notice given him.—*Khodce Koiburtnee v. Doorga Dass Bhattacharjee*, 15 W. R. 82; 7 B. L. R. App. 37.

THERE is nothing in s. 514 which prevents an accused person who has forfeited his bail-bond by default of appearance from being proceeded against under s. 179 of the Penal Code, notwithstanding that his surety has paid the penalty mentioned in the recognizance.—Reference in the matter of *Tajoomuddy Lahoree*, 10 W. R. 4; 1 B. L. R. 1.

THERE must be a regular judicial trial and legal enquiry before an order to forfeit recognizances can be passed, and the evidence taken should be recorded in the presence of the accused, or in the presence of an agent of the accused duly authorized to appear in such enquiry.—*Kalikant Roy Chowdhry*, Petitioner, 12 W. R. 54; 3 B. L. R. App. 155.

ON THE application of A, a recognizance was taken from B that he would keep the peace for six months under a penalty of Rs. 500. Before the expiry of the period, B assaulted C. *Held* that there was a forfeiture of the recognizance. The bond is general. It is a bond to keep the peace generally, and the amount can be escheated if the peace is broken under any circumstances.—*Jaha Bux v. Government*, 6 B. L. R. 66.

WHEN a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not nevertheless proceed to forfeit such recognizance, it must be held that he thought it unnecessary to do so. Proceedings taken after the lapse of a considerable period are bad, and contrary to the intention of the law.—*In re Ram Chunder Lalla*, 1 Cal. Law Rep. 134.

A MAGISTRATE should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the sureties should be bound. Where the amount of the recognizances were wholly out of proportion to the nature of the dispute, and to the means of the parties, the High Court held that they could not interfere, but the Government might be moved in the matter.—*Nilmadhub Ghosal and others*, Petitioners; *Judoonath Roy and others*, Petitioners, 19 W. R. 1.

WHERE a defendant was bound over to appear on one particular day only, and not on any subsequent day until the case was closed, and did appear on that day, but the case was not called on, and at the end of the day went away, and did not return the next day when the case was called on for hearing, it was held that he had fulfilled the condition of his recognizances, and that the forfeiture thereof for his non-appearance the second day was illegal.—*Mad. II. C. Rulings*, April 9, 1869; *Mad. II. C. Rep. App. 44*.

A SURETY who was bail for an accused person having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail-bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, *first*, of the accused, and, *secondly*, of the surety. No recognizance had been signed by the accused, and no notice had been given to the surety to shew cause. On a reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal.—*Reg. v. Durga Dass Bhattacharjee*, 7 B. L. R. 37.

A FIRST-CLASS Deputy Magistrate decided that a bond for keeping the peace had been forfeited, and, proceeding under s. 514 of this Code, levied the penalty. An appeal was entertained from this order by the Sessions Judge of South Arcot, and the order was reversed. A petition was then presented under s. 435 of this Code, praying the High Court to reverse the order of the Sessions Judge. *Held* that the order of the First-class Deputy Magistrate was not open to appeal.—*Ananthachárrí and three others* (Petitioners) *v. Ananthachárrí and another* (Counter-Petitioners), 1. L. R., 2 Mad. 169.

ON THE 20th April 1877, A was bound down to keep the peace for one year. On the 14th of January 1878, he was convicted of an offence and sentenced therefor to fine and imprisonment, but no order was made for the recovery of the penalty, though the Magistrate knew that the recognizance had been forfeited. On the 2nd of April 1878, the Magistrate, at the instance of a third party, called upon A to show cause why the penalty of the recognizance should not be paid, and a warrant for its recovery was issued on the 6th June 1878. *Held* that the warrant must be quashed, on the ground that the Magistrate having inflicted a sentence of fine and imprisonment with the knowledge that the recognizance was forfeited, he was not competent to inflict a further penalty on a reconsideration of the circumstances.—*In re Parbutti Churn Bose* and another, 3 Cal. Law Rep. 406.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Appeals from, and revision of, orders under section 514. Act X., 1872, s. 398, penult. para.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances. Act X., 1872, s. 398, last para. Act X., 1875, s. 138, last para.

THE High Court has no power to reduce the amount of recognizance which has been forfeited; but in a case of hardship the matter should be referred to Government.—*Empress v. Narul Huqq* and another, 1. L. R., 3 Cal. 757.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

Order for disposal of property regarding which offence committed. Act X., 1872, s. 418. Act X., 1875, s. 115. Act IV., 1877, ss. 243, 244. Act XI., 1874, s. 38.

When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock, or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

EXPLANATION.—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

UNDER s. 132A, Act VIII. of 1869, no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court. Such order must be made at the time of passing judgment.—*Rash Mohun Goshamy and another v. Kali Nath Raha and another*, 19 W. R. 3.

THE words “any property” in s. 115 of the High Courts’ Criminal Procedure Act include as well property voluntarily produced before the Magistrate by a witness in the case, as property seized by the police or found on the person of the prisoner.—*Reg. v. Ramdas*; *Ex-parte Madavji Dharamsi*, 12 Bom. H. C. Rep. 217.

AT THE conclusion of the trial of a person for the sale and distribution of obscene books, the Court trying him ordered the destruction of certain copies of such books voluntarily surrendered by him, under s. 517 of this Code: *Held* that such Court was not empowered by that section to make such an order.—*Empress v. Indarman*, I. L. R., 3 All. 837.

WHERE a person was accused of dishonestly receiving stolen property knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen: *Held* that the Magistrate was competent, believing that the property was stolen, to make an order under this section regarding its disposal.—*Empress v. Nilambur Babu*, I. L. R., 2 All. 276.

THE rule of law, that possession by the taker in good faith is no defence against the owner of a chattel whose possession was lost through theft, has no application to a currency-note, which, like money, does not stand upon the same footing as other chattels. The property in money passes by mere delivery, and nothing short of fraud will engraft an exception upon this rule.—*Mad. H. C. Pro.*, Feb. 6, 1873; *Weir*, p. 24.

A FIFTY-RUPEE currency-note was changed by one M at the Government Treasury on the Shevaroy Hills. The said M was subsequently convicted by the Sessions Court of Salem of having stolen the note from one S. The note was produced in evidence at the trial, and the Court directed it to be given up to S, from whom it had been stolen. *Held* that the Sessions Court was wrong. That a note of this kind being in legal view money, the property in it passes by mere delivery, and that nothing short of fraud in taking an instrument payable to bearer will ingraft an exception upon the rule.—*Collector of Salem, Petitioner*, 7 Mad. H. C. Rep. 233.

A GOVERNMENT currency note was stolen from A, and cashed by B, in good faith, for C. On the conviction of C for theft, the Magistrate ordered the note to be given to B. A appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of Appeal, but submitted the case for the orders of the High Court: *Held* that the case could be disposed of by the Judge, as the words “Court of Appeal” in this section are not necessarily limited to a Court before which an appeal is pending; and that Act IX of 1872, s. 76, did not apply, as the change of a currency-note for money is not a contract of sale, and that, as the note came honestly into the hands of B, the order of the Magistrate was right.—*Empress on the prosecution of Michell v. Joggessur Mochi*, I. L. R., 3 Cal. 379.

A WAS charged before the police with theft of certain property. The police considered that no offence had been committed, and reported the matter to a 2nd class Magistrate, who, agreeing with the police, ordered the property to be restored to A. On application by the complainant, the District Magistrate found that A had removed, though not dishonestly, the property from B, a deceased person, and ordered the property to be given by the police to B’s heirs; it was so given: *Held* that the provisions of this chapter do not apply to such a case. Ss. 523, 524, 525 of this Code, contemplate proceedings preliminary to, and independent of, enquiry. Upon general principles, where there has been an enquiry or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound to restore that property into the possession of the person from whom it is taken, unless, as provided for by s. 517, such Court is of opinion that “any offence appears to have been committed” regarding it; then such order as appears right for the disposal of the property may be made. The High Court cannot direct the restoration of the property already delivered by the police under the illegal order of the District Magistrate.—*In re Annappurna Bai*, I. L. R., 1 Bom. 630.

518. In lieu of itself passing an order under section 517, the Court Act X., 1872

Order may take form of reference to District or Sub-divisional Magistrate.

may direct the property to be delivered to the District Magistrate, or to a Sub-divisional Magistrate, who shall, in such cases, deal with it as if it had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned. s. 420.

519. When any person is convicted of any offence which includes, 30 & 31 Vic.,

Payment to innocent purchaser of money found on accused.

or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has, on his arrest, been taken out of the possession of the convicted person, the Court may, on the application of such purchaser, and on the restitution of the stolen property to the person entitled to the possession thereof, order that, out of such money, a sum not exceeding the price paid by such purchaser be delivered to him. c. 35, s. 10.

520. Any Court of appeal, confirmation, reference, or revision, may Act X., 1872,

Stay of order under section 517, 518, or 519.

direct any order under section 517, section 518, or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter, or annul such order. s. 419.

521. On a conviction under the Indian Penal Code, section 292, Livingston,

Destruction of libellous and other matter.

section 293, section 501, or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted. 480.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274, or section 275, order the food, drink, drug, or medical preparation in respect of which the conviction was had, to be destroyed.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, Act X., 1872,

Power to restore possession of immoveable property.

by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same. s. 534. Act X., 1875, s. 142. Act IV., 1877, s. 233.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

AN ORDER under this section must be founded on a finding that the person in whose favour it was made was dispossessed of specific immoveable property by the use of criminal force, which formed a material ingredient in the matter of a criminal conviction, and it must in terms restore such person to the property from which he had been dispossessed.—*Luchmee Dass and others v. Pallat Lall, servant of Mr. Crowdie*, 23 W. R. 54.

Act X., 1872, **523.** The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been
 ss. 387, para. Procedure by police upon stolen, or found under circumstances which
 2, 415. seizure of property taken create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Act X., 1872, If the person so entitled is known, the Magistrate may order the
 s. 416. Procedure where owner property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation, specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

THE petitioner was charged with the theft of certain money found in his house, and was acquitted. A proclamation having been made for the claimant to come in and claim the property, no one appeared, whereupon the petitioner preferred his claim, and asked the Assistant Magistrate to summon certain witnesses, but the Assistant Magistrate refused to do so, and disallowed his claim, the Magistrate on appeal declining to interfere. On reference by the Judge, the High Court held that the Assistant Magistrate was bound to summon the witnesses named by the petitioner, set aside that officer's order, and directed him to dispose of the case after taking due steps for securing the attendance of the witnesses in question.—*Sookhun Sahoo v. Government*, 18 W. R. 5.

Act X., 1872, **524.** If no person, within such period, establishes his claim to such
 s. 417. Procedure where no property, and if the person in whose possession
Act IV., 1877, claimant appears within six such property was found is unable to show that
 s. 244. months. it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

No PROPERTY found in the possession of an accused person can be confiscated unless the proceedings prescribed in ss. 523 and 524 have been strictly followed.—*Behary Shaha v. Nubby Khan*, 9 W. R. 13.

Act X., 1872, **525.** If the person entitled to the possession of such property is
 s. 415, para. Power to sell perishable unknown or absent, and the property is subject
 2. property. to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

Act X., 1872,
s. 64.
Act X., 1875,
s. 147.

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses,

it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor. Archb. 88.

Every accused person making any such application shall give to

Act IV., 1877,
s. 181.

Notice to Public Prosecutor of application under this section.

the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

THE High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate.—Shankar Abaji Hoshing, Petitioner, 6 Bom. H. C. Rep. 69.

It is only where there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one magisterial officer to another.—Reg. v. Kisto Chunder Ghose, 2 W. R. 58.

THE powers of interference given to the High Court by the above section were not intended to be exercised in the case of an acquittal by the Magistrate, but only in the case of convictions or other orders whereby a defendant is aggrieved or injured.—The Corporation of Calcutta v. Bhikaram Napit *alias* Bhikan Napit, 1. L. R., 2 Cal. 290.

IN AN application for the transfer of a case under s. 526, in which the prisoner has been convicted, and is undergoing imprisonment, it is in the discretion of the High Court to order, for sufficient *prima-facie* cause shown, that the case be removed without notice to the Crown.—Reg. v. Upendra Nath Dass and another, 1. L. R., 1 Cal. 356.

THE application to transfer the trial of a criminal case from one District Court to another should be made, not by letter to the English Department, but before the High Court in its judicial capacity, and should be supported by affidavit or affirmation in the usual way.—Reg. v. Zuhiruddeen and others, 1. L. R., 1 Cal. 219 (F. B.); 25 W. R. 27.

THE High Court has no power, under s. 526 of this Code, to order a fine to be refunded on quashing a conviction. The Court in this instance decided whether the case should be transferred under s. 526 on the notes of the evidence taken by the Magistrate at the trial.—Reg. on the prosecution of Morad Ali v. Hadjee Jeebun Bux, 1. L. R., 1 Cal. 354.

IN A case transferred to the High Court, the Court has no power to give costs. *Semble*—The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the judicial officers of all Criminal Courts subject to the Act.—In the matter of J. Louis, and in the matter of Bengal Act VI. of 1866, 15 B. L. R. 14.

BEFORE the transfer of a case from one Criminal Court to another can be made in cases in which the accused objects to the transfer, the prosecution must bring forward the very best evidence to prove that a fair trial cannot be had in the district in which the case is ordinarily triable.—In the matter of the petition of the Legal Remembrancer.—*Empress v. Nobo Gopal Bose*, 1. L. R., 6 Cal. 491.

THE High Court has power, under s. 29 of its Letters Patent, to transfer a criminal case from a Court in the mufassal for trial before itself. The mere possibility or probability that difficult questions, whether of law or of fact, will arise, is no reason for transferring a case under s. 29, there being a sufficient remedy provided in the right of appeal to the High Court.—*In re Ameer Khan and Hashmadad Khan*, 15 W. R. 69; 7 B. L. R. 240.

THE Special Court of British Burmah has power to entertain an appeal from a sentence of death or other sentence passed by the Judicial Commissioner in a case transferred by him to his own Court from that of the Sessions Judge under the powers conferred by s. 526 of this Code and Act XVII. of 1875 (Burmah Courts Act), s. 35, the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner.—*Empress v. Tsit Ooe*, 1. L. R., 4 Cal. 667.

WHERE it appeared that the only officers of the District of P, otherwise competent to hear an appeal from a conviction for theft of property alleged to have belonged to the Road Cess Committee of the District, were, by reason of their connection with that Committee, interested in the result of the appeal, the High Court directed that the petition of appeal, together with all papers connected therewith, should be forwarded to the Sessions Judge of the 24-Parganas to be dealt with as an appeal presented in his own Court.—*In re Dwarka Nath Banerjee*, 6 Cal. Law Rep. 279.

THE construction of s. 29 of the Letters Patent is, that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a Mofussil Court, which

is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the Mofussil. "Competent to investigate it" does not include competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and punishment.—*Reg. v. Nabadwip Goswami and Kushadhwaj Mandal*, 1 B. L. R. 15.

THE High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made without risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid.—*Arunachella Reddi and 5 others, Petitioners*, 5 Mad. H. C. Rep. 212.

A CHARGE was made against the accused of using criminal force under s. 141, Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided that it did not amount to the offence charged: *Held* that, assuming that an error of law had been committed, the High Court had no power to issue a *mandamus* to commit the defendants; it was not a case where the Magistrate had declined jurisdiction; he had exercised his jurisdiction and heard the case. *Held* also that it was not a case which the High Court could transfer under s. 526 of this Code.—In the matter of the *Empress on the prosecution of Malcolm v. Gasper and others*, 1 L. R., 2 Cal. 278.

A CHARGE under ss. 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should, in his decision, state definitely what were the particular representations and words which he found on the evidence had been exhibited and uttered. Where no such specific decision has been come to, the High Court, when the case has been transferred under s. 526 of this Code, may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained.—*Reg. v. Upendra Nath Dass and another*, 1 L. R., 1 Cal. 356.

S. 111 of the Police Act (XIII. of 1856) does not give jurisdiction to the High Court, when a case is brought before it on *certiorari*, to enquire whether the Magistrate has come to a correct conclusion as to the guilt or innocence of the prisoner. The object of that section is to limit the objections to a conviction to some substantial meritorious ground, such as want of jurisdiction or the like, and to prevent a conviction from being quashed on a mere error of form or of procedure. But the section does not give the High Court any right to interfere on the ground that the Magistrate has come to a wrong conclusion on the question of guilt or innocence of the accused person.—*Reg. v. Nathahal Petamber*, 10 Bom. H. C. Rep. 102.

THE High Court has power to call up and revise the proceedings of a Magistrate while they are in an interlocutory state of investigation, as well as to direct the transfer of a criminal case from one Criminal Court subordinate to it to any other of equal or superior jurisdiction, and it is incidental to that power that the Court should be able to suspend the proceedings of the Magistrate. The High Court has also power to interfere with the Magistrate's proceedings without the record before it; otherwise the non-existence or non-production of the record would really nullify the Court's powers of revision in many cases. But, except in extreme cases, it must not exercise its power of interference until it has the record before it.—In *Munshi Syad Abdul Kadir Khan (Petitioner) v. Magistrate of Purneah*, 11 B. L. R. 8.

A, ALLEGED to have carried on business in Calcutta without having taken out a license under Beng. Act IV. of 1876, was summoned, at the instance of the Corporation, by B, a servant of the Corporation, and also a Justice of the Peace. The case was subsequently heard by B. and it was shown that notice of the assessment under class ii, sched. 3, had been duly served on A, and that, though he then denied his liability to take out any license, and stated that he carried on no business as alleged, he had not appealed against the assessment under s. 79. It was further shown that the assessment had been confirmed by the Chairman of the Corporation, but that the amount had not been paid. A thereupon tendered evidence to show that he was not

liable to take out any license ; but B refused to hear such evidence, and, convicting A, sentenced him to pay a fine. On an application, under the above circumstances, to the High Court under s. 147, Act X. of 1875 (s. 526 of this Code) : *Held* that the finality of the decision of the Chairman referred to in s. 79 has only reference to the class under which a particular person, who is admittedly bound to take out a license under s. 75, should be assessed, and not to the case where the liability to take out a license at all is denied, this being a question which can only be determined judicially after taking evidence by a competent Court in a prosecution under s. 77, and that, therefore, the refusal of B to hear the evidence tendered by A on this point was illegal. *Held* also that the proceedings and ultimate conviction of A were illegal, inasmuch as B, being a servant of the prosecutor, *i.e.*, the Corporation, had such an interest as might have given him a bias in the matter, and that, consequently, he ought not to have sat as Justice of the Peace either at the granting or upon the hearing of the summons.—*Wood v. The Corporation of the Town of Calcutta*, 1. L. R., 7 Cal. 322.

Act X., 1872, s. 64A. (Act XI., 1874, s. 11.) **527.** The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

Act X., 1872, ss. 44, last para. 47, Act XI., 1874, s. 6. **528.** Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Act X., 1872, s. 48. The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

A MAGISTRATE cannot refer a case to a Deputy Magistrate unless he had reduced the examination of the complainant into writing ; nor can he himself try a case once transferred to a Deputy Magistrate without formally recalling the case.—*Grish Chunder Ghose and others, Petitioners*, 16 W. R. 40 ; 7 B. L. R. 513.

WHERE a case has once been made over by a Magistrate to a Deputy Magistrate for trial, the Magistrate has no jurisdiction to do anything more in the matter so long as the transfer to the Deputy Magistrate is in existence. The Magistrate may withdraw the case from the files of the Deputy Magistrate.—*Reg. v. Mrs. Belilios*, 12 W. R. 53 ; 3 B. L. R. App. 151.

WHEN a case under trial is removed to another Magistrate, the whole proceedings must commence *de novo*. S. 350 of this Code applies only when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another, who has, and exercises, jurisdiction in such case.—*Reg. v. Khan Mahomed and another*, 24 W. R. 53.

THE Magistrate of the District has authority to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. If the Magistrate, having in the exercise of his authority withdrawn any

case, finds that it did not come within the jurisdiction of his magistracy, he would not merely be competent, but bound to refuse to proceed further with the case.—*Vilaetee Khanum v. Meher Ali*, 24 W. R. 4.

ALTHOUGH the Code does not require a Magistrate to state his reasons for transferring a criminal case from a Court subordinate to him to his own or to any other subordinate Court, the High Court set aside an order of a Magistrate transferring a case, after the Subordinate Magistrate before whom it was had taken evidence for the prosecution, and had expressed an opinion unfavourable to the prosecution. In so transferring the case to himself, the Magistrate was held not to have exercised proper discretion; and the High Court directed the case to be restored to the Magistrate from whose file it had been removed.—*Reg. v. Nobo-coommar Banerjee*, 14 W. R. 12; 5 B. L. R. App. 45.

MAGISTRATES of Districts should exercise the powers conferred on them by s. 528 of this Code only when it is absolutely necessary for the interests of justice that they should do so; and when one of the parties to a case applies to have it withdrawn from the Magistrate inquiring into or trying it, and referred to another Magistrate, the Magistrate of the District should give the other party notice of such application, and an opportunity of showing cause why such application should not be granted. Where the accused in a criminal case applied to the Magistrate of the District, after the evidence of the complainant and his witnesses had been taken, to withdraw such case from the Subordinate Magistrate trying it, and to try it himself, such application not containing any sufficient reason justifying the granting of the same, and the Magistrate of the District, without giving the complainant notice of such application, or opportunity of showing cause against it, and, without stating any reason, withdrew such case from the Subordinate Magistrate trying it, and referred it to another for trial, the High Court set aside the order of the District Magistrate and of the Magistrate to whom such case was referred for trial, and directed the Magistrate from whom it had been withdrawn to proceed with it.—*In re Umrao Singh v. Fakir Chand*, 1 L. R., 3 All. 749.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings. **529.** If any Magistrate not empowered by Act X., 1872, law to do any of the following things, ss. 32, 34, namely:— cl. (9). Nelson, p. 54.

- (a) to issue a search-warrant under section 98;
 - (b) to order, under section 155, the police to investigate an offence;
 - (c) to hold an inquest under section 176;
 - (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;
 - (e) to take cognizance of an offence under section 191, clause (a) or clause (b);
 - (f) to transfer a case under section 192;
 - (g) to tender a pardon under section 337 or section 338;
 - (h) to sell property under section 524 or section 525; or
 - (i) to withdraw a case and try it himself under section 528;
- erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings. **530.** If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely):— Act X., 1872, s. 34, excepting cl. (9).

- (a) attaches and sells property under section 88;

- (b) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;
- (c) demands security to keep the peace;
- (d) demands security for good behaviour;
- (e) discharges a person lawfully bound to be of good behaviour;
- (f) cancels a bond to keep the peace;
- (g) makes an order under section 133, as to a local nuisance;
- (h) prohibits under section 143 the repetition or continuance of a public nuisance;
- (i) issues an order under section 144;
- (j) makes an order under Chapter XII.;
- (k) takes cognizance, under section 191, clause (c), of an offence;
- (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate;
- (m) calls, under section 435, for proceedings;
- (n) makes an order for maintenance;
- (o) revises, under section 515, an order passed under section 514;
- (p) tries an offender;
- (q) tries an offender summarily; or
- (r) decides an appeal; his proceedings shall be void.

A MAGISTRATE having adopted summary procedure in the case of an offence which he had no power to try summarily, the High Court set aside the proceedings as being void.—*Khetter Mohun Chowrunghie, Petitioner*, 22 W. R. 43.

WHERE, on the facts found by a Magistrate, an offence is established which he cannot try summarily, he is not competent to convict for an offence made up of only some of those facts in order to give himself jurisdiction. Such proceedings are void, because he was not empowered by law to try the offender summarily.—*Chunder Seekhur Sookul and others v. Dhurim Nath Tewarce*, 1 Cal. Law Rep. 434.

WHERE a Magistrate has tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled, it was held that such Magistrate might commit the accused person to the Court of Session on the evidence given before him at such trial.—*Empress v. Ilahi Baksh*, I. L. R., 2 All. 910.

531. No finding, sentence, or order of any Criminal Court, shall be set aside merely on the ground that the inquiry, Proceedings in wrong trial, or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Sub-division, or other local area, unless it appears that such error occasioned a failure of justice.

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

UNDER s. 472, Code of Criminal Procedure, before a Sessions Judge can commit a person to the Court of Session, it is necessary that the offence should have been committed before the Sessions Court, and that it be one within the cognizance of, and triable exclusively by, that Court. The offence of intentionally giving false evidence (s. 193, Penal Code), not being triable exclusively by the Sessions Court, is not one in which the Sessions Judge can commit.—*Reg. v. Unnath Bundhoo Banerjee*, 21 W. R. 37.

S. 532 contemplates the contingency of a case which has been inquired into at the proper place, as indicated by s. 177, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment, and not of a case, which has been inquired into in a district in which it was not committed, being committed to the proper Court of Session, as indicated by that section, by a particular Magistrate duly empowered by law to make such a commitment. Consequently, where a Magistrate inquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such commitment because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings in such case are illegal *ab initio*.—*Empress v. Jagan Nath*, I. L. R., 3 All. 258,

533. If any Court before which a confession or other statement of Act X., 1872,

Non-compliance with provisions of section 164 or 364. an accused person recorded under section 164 s. 346, last para. or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

A CONFESSION does not become irrelevant merely because the memorandum required by law to be attached thereto by the Magistrate taking it has not been written in the exact form prescribed.—*Empress v. Bhairon Singh and others*, I. L. R., 3 All. 338.

534. An omission to ask any person whether he is an European Act X., 1872, s. 85.

Omission to ask question prescribed by section 454, clause 2. British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

535. No finding or sentence pronounced or passed shall be deemed Act X., 1872, s. 216, Explan. I.

Effect of omission to prepare charge. invalid merely on the ground that no charge was framed, unless in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge. Act X., 1872, s. 216, Explan. II.

WHERE a Magistrate did not draw up a charge, but gave the accused clearly to understand the nature of the charge against him, it was held that the irregularity did not occasion a failure of justice.—*Bhugwan and others v. Doyal Gope*, 10 W. R. 7.

A MAGISTRATE tried and acquitted a person accused of an offence without preparing in writing a charge against him. Such omission did not occasion any failure of justice. It was therefore held that such omission did not invalidate the order of

acquittal of such person and render such order equivalent to an order of discharge, and such order was a bar to the revival of the prosecution of such person for the same offence.—*Empress v. Gurdur and another*, 1. L. R., 3 All. 129.

Act X., 1872, s. 233. Expln. 4 Cal. 409. **536.** If an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not, on that ground only, be invalid, unless the objection is taken before the Court records its finding.

THE trial by a jury of an offence triable with assessors is not invalid on that ground, but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trial by jury is not invalid.—*Empress v. Mohin Chandra Rai and another*, 1. L. R., 3 Cal. 765.

IN A trial by a jury before a Court of Session upon charges, some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority of four to one, returned a verdict of "not guilty" on all the charges. *Held* that it was not competent to the Judge who disagreed with the verdict to treat the trial, so far as it dealt with the latter charges, as a trial with the aid of assessors, and, concurring with the minority, to convict and sentence the accused persons. It was the duty of the Judge, in such a case, to have accepted the verdict as one of acquittal, and then to have passed orders in accordance with s. 307 of this Code.—*Bhothnath Dey and others*, Appellants, 4 Cal. Law Rep. 405.

Act X., 1872, ss. 203, para. 3, 283, paras. 1 and 2, 300, 464, paras. 6 and 7. (Act other proceedings. XI., 1874, s. 41.) **537.** Subject to the provisions hereinbefore contained, no finding, sentence, or order passed by a Court of competent jurisdiction, shall be reversed or altered under Chapter XXVII. or on appeal or revision on account—
of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, or other proceedings before or during trial, or in any inquiry or other proceeding under this Code, or
of the want of any sanction required by section 195, or
of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want, or misdirection has occasioned a failure of justice.

MISRECEPTION of evidence is a defect or irregularity within the meaning of s. 537.—*Reg. v. Beharee Dosadh and others*, 7 W. R. 7.

THE High Court quashed a sentence which was passed upon a prisoner because he had not been asked if he had any witnesses to call, although he was tried at the same time with others who had been so asked.—*Bhugwan and others v. Doyal Gope*, 10 W. R. 7.

WHEN the accused has not his witnesses in attendance, and does not apply to the Magistrate to summon them, the omission of the Magistrate to require him to produce his witnesses does not prejudice the accused, or amount to an error or defect calling for interference within this section.—11 W. R. C. R. 15.

CRIMINAL proceedings are bad unless they are conducted in the manner prescribed by law; and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused.—*Reg. v. Bhola Nath Sein*, 25 W. R. 57; 1. L. R., 2 Cal. 23. See also 1. L. R., 6 Cal. 83, 96.

WHERE, without asking the opinion of the assessors, a Court of Session acquitted an accused person after his defence had been heard, it was held that such omission, although a serious irregularity, was not such an error or defect in the proceedings as was a ground of revisional interference.—*In re* Narayan Das, 1 L. R., 1 All. 610.

WHERE a Magistrate convicted under certain repealed sections of a law, the High Court refused to set aside the conviction, as the conviction and sentence might have been passed under sections of the Penal Code, and no substantial injury had been done to the accused.—*Rughoonath Dass v. Chuckerdun Rant and others*, 15 W. R. 49.

WHEN the evidence of the witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court declined to interfere, as the irregularity of the procedure was one by which the prisoners were not prejudiced.—*Purnessur Singh and others v. Soroop Audhikaree*, 13 W. R. 40.

THE High Court is precluded under this section from altering or reversing the sentence passed by the Sessions Court on account of error of procedure when the prisoner was not substantially prejudiced by such error, and has not been sentenced to a more severe punishment than is awardable for the offence of which he ought properly to have been convicted.—*Govt. v. Kalika Misser*, High Court, N. W. P., July 23, 1866.

IT is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not a witness to contradict any new case set up by the prisoner. Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence in allusion to the evidence of the witness, the High Court refused to set aside the conviction.—*Reg. v. Sham Kishore Haldar*, 13 W. R. 36.

AN ACCUSED person whose signature to a statement made by him to the committing Magistrate is not taken as provided in s. 364 is not prejudiced thereby within the meaning of that section, unless he is unfairly affected as to his defence on the merits. Where a prisoner in the Court of Session was represented by a pleader who had opportunity to object to the admissibility of his statement, and did not, the High Court held that he was not prejudiced.—*Reg. v. Deva Dayal*, 11 Bom. H. C. Rep. 237.

WHERE a Magistrate trying an offence rejected an application by the accused person that a certain person might be examined on his behalf either in Court or by commission, without recording his reasons for refusing to summon such person, as required by s. 257, it was held that the conviction of the accused person must be set aside, and the case be re-opened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law.—*In re* Satnarain Singh and another, 1 L. R., 3 All. 392.

A SESSIONS Court has no power to direct the commitment of a person discharged by a Deputy Magistrate, without first giving such person an opportunity of showing cause against such commitment. But the Court has power to direct the subordinate Court to inquire into any offences for which it considers a commitment should be ordered. When, however, a trial under such a commitment made by order of a Sessions Judge has been duly held, and no actual failure of justice has been caused by the error of the Sessions Judge, s. 537 would be a bar to the reversal of his judgment.—*Empress v. Khanir*, 1 L. R., 7 Cal. 662.

UPON the single charge of wrongful confinement preferred under s. 342 of the Penal Code before a Joint Magistrate, the prisoners raised a defence justifying the confinement on the ground that the persons confined had been caught by them under circumstances which led to the belief that they had committed house-breaking by night with intent to commit theft. Enquiry having been made, the Magistrate committed the prisoners, not only for wrongful confinement, but, disbelieving the defence, for fabricating false evidence and for bringing a false charge. The prisoners were tried by the Sessions Judge, and found guilty on all three charges at one and the same time. *Held* that the conviction on the last two charges was illegal, as by adding the additional charges the Magistrate had really prejudged the defence to the first charge. Where the Court, without having first heard the

evidence for the prosecution, examines the witnesses for the defence, he commits an irregularity; but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside.—*In re Turebullah and others*, 4 Cal. Law Rep. 338.

Act IV., 1877,
s. 185, para.
5.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress, or other proceedings relating thereto.

Distress not illegal, nor a trespasser, for defect or want of form in proceedings.

CHAPTER XLVI.

MISCELLANEOUS.

Act X., 1875,
s. 140.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

Act X., 1872,
ss. 192, 351.

Act X., 1875,
s. 80.

Act IV., 1877,
ss. 85, 134.

540. Any Court may, at any stage of any inquiry, trial, or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine, or recall and re-examine, any such person, if his evidence appears to it essential to the just decision of the case.

It is entirely within the discretion of a Magistrate conducting a trial in a warrant case to admit evidence on behalf of either side at any stage of the trial; but the Magistrate, in exercising the discretion conferred on him, ought to have good reason for allowing witnesses on the part of the prosecution to be interposed in the midst of the case of the accused.—*Reg. v. Kassy Singh*, and *Reg. v. Hukoree Singh* and another, 21 W. R. 61.

THERE is no law or principle to prevent a Magistrate from examining as a witness for the prosecution a person who has been suspected and arrested for the offence under trial, but who has been discharged for want of evidence.—*Reg. v. Behari Lal Bose*, 7 W. R. 44. So also a person apprehended by the police and brought before the Magistrate together with the accused is a competent witness, provided that, at the time he was examined, he was not charged with the accused and upon his trial.—*Reg. v. Narayan Sundar*, 5 Bom. H. C. Rep. 1, Crown Cases.

Act X., 1872,
s. 88.

541. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

Act IV., 1877,
s. 139.

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining as a witness or an accused person, in any case pending before him, any person confined in any jail within the local

Power of Presidency Magistrate to order prisoner in p for

limits of his jurisdiction, may issue an order to the officer in charge of the said jail, requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor-General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.

545. Whenever, under any law in force for the time being, a Criminal Court imposes a fine, or confirms, in appeal, revision, or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution ;
(b) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

WHERE an accused has been called upon to enter in his defence, an award of compensation is illegal.—Mad. II. C. Pro., Nov. 22, 1879.

AN ORDER awarding compensation to the innocent purchaser of property found to have been stolen is not authorized by law.—Mad. II. C. Pro., Dec. 3, 1872 ; Weir, p. 6.

COMPENSATION cannot be awarded to any one excepting the person who has directly suffered by the offence. It cannot be given to the heirs of a person who has been killed.—Reference of proceedings in the case of Roop Lall Singh, 10 W. R. 39.

THERE must be proof of some loss to the complainant.—Reg. v. Kartik Chunder Holder, 5 R. C. C. Cr. 58. And the loss or special damage to the complainant must have been directly caused by, or have been the direct result of, the offence.—Reg. v. Samsen Babaji, 3 Bom. II. C. Rep., Cr. Ca., 43.

A JOINT Magistrate was held not competent to direct that a portion of a fine inflicted under s. 434 of the Penal Code be paid to an amin for the purpose of paying the expense of his deputation to restore the land-marks which had been destroyed by the opposite party.—Reg. v. Moorut Lall and others, 6 W. R. 93.

WHEN loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award a portion of the fine inflicted on the

accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—Reg. v. Yessappa bin Ningappa, 5 Bom. H. C. Rep., Cr. Ca., 41.

THE Sessions Judge should record under what section, or on what grounds, he orders a portion of the fines inflicted on prisoners convicted of dacoity to be made over to the complainant. He should also record the specific sums to be paid to each complainant, if there are more complainants than one.—Reg. v. Bissonath Mundle and others, 2 W. R. 58.

THE proper course of procedure under this section is to impose a fine, and out of the fine realized to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section. It is illegal to order the payment of compensation in addition to fine.—Mohesh Mundul v. Bholanath Mundul, 3 Cal. Law Rep. 404.

AN AWARD of compensation should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be found upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial. Such an award should always be made in the presence of the accused.—Reg. v. Gour Churn Dass and others, 11 W. R. 53.

WHERE two persons were charged with theft, and it appeared that the second had innocently bought stolen property from the first, and was therefore discharged, the loss sustained by him was not a loss within the meaning of this section so as to permit a portion of the fine to be handed over to him as compensation.—Rulings of the Mad. H. C., Jan. 16, 1869; 4 Mad. H. C. Rep. 28, App.

WHERE the accused were convicted of the theft of some bullocks and fined, and the Magistrate under this section directed that the fines, if collected, should be paid to the other witnesses as compensation for having to return to the complainant the bullocks which he had purchased, it was held that the order was bad, the sale to the other witness not being the offence complained of within the meaning of this section.—7 Mad. H. C. Rulings, Dec. 3, 1872, 13.

Act X., 1872, s. 308, last para. 546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Act X., 1875, s. 106, last para.

THE "taking into account," referred to in this section, means that any sum awarded as compensation by the Magistrate is to be taken into consideration at the time of awarding damages in any subsequent civil suit, not that is to be deducted from any sum that may be given as damages in such suit.—Love v. Ainsworth, 22 W. R. 336, Civil.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Moneys ordered to be paid recoverable as fines.

Act X., 1872, ss. 201, 276. 548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Act XI., 1874, s. 25.
Act X., 1875, s. 13.
Act IV., 1877, s. 170.

THE High Court will not order a copy of the Judge's notes of the evidence and proceedings upon conviction in a criminal case to be furnished to the prisoner on the ground of alleged probable hardship. A fair *prima-facie* case as to the irregularity of those proceedings, or the illegality or impropriety of the sentence or order, must appear, before the Court will call for, or direct a return of, the record of the proceedings.—Reg. v. Sabbayya Gaundan, 1 Mad. H. C. Rep. 138.

549. The Governor-General in Council may make rules, consistent Ben. Reg. XX, 1825.

Delivery to military authorities of persons liable to be tried by Court-martial.

with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall, in proper cases, deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

550. Police-officers superior in rank to an officer in charge of a Act X., 1872, s. 137.

Powers of superior officers of police.

police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

551. Upon complaint made to Presidency Magistrate or District Act IV., 1877, s. 17.

Power to compel restoration of abducted females.

Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian, or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

552. Whenever any person causes a police-officer to arrest another Act IV., 1877, s. 242, omitting provision as to complaints, which is made elsewhere.

Compensation to person groundlessly given in charge in Presidency-town.

person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.

Act X., 1872,
ss. 292, 293.

553. With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(a) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(c) make rules for regulating its own practice and proceedings, and the practice and proceedings of all Criminal Courts subordinate to it; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

Act X., 1872,
ss. 442, 493,
para. 1, 509,
para. 2.

Act IV., 1877,
s. 97.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

New.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

A Sessions Judge who makes a complaint before a Magistrate is not incompetent afterwards to try it without the aid of a jury, if he has no personal or pecuniary interest in the subject of the charge—*Reg. v. Mookta Singh*, 13 W. R. 60; 4 B. L. R. 15.

A MAGISTRATE, who has been authorized by the Collector of a district, under s. 43 of the Stamp Act, to prosecute offenders against the stamp-laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecutions.—*Empress v. Gangadhar Bunojo*, 1 L. R., 3 Cal. 622.

WHERE a Magistrate took an active part in the prosecution of the prisoners, and recorded the evidence of the material witnesses preliminary to deciding whether the case should go to trial or not, and by whom it should be tried, it was held that he was not a proper Court to hear the appeal from the conviction come to in the case.—*Het Lal Roy, Petitioner*, 22 W. R. 75.

ALL prosecutors whose charges are dismissed by the Presidency Magistrate are affected by the order of discharge, and are therefore entitled to obtain copies of the order made by, and of the depositions taken before, the Magistrate.—In the matter of the Empress on the prosecution of the Bank of Bengal (*Petitioner v. Dinonath Roy* (Opposite Party), I. L. R., 8 Cal. 166.

THE proceedings of a Magistrate who tries prisoners charged with having committed offences under ss. 93 and 95 of the Registration Act of 1866 are not illegal and without jurisdiction or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his official capacity of Sub-Registrar.—*Government of Bengal v. Heera Lal Dass and others*, 17 W. R. 39; 8 B. L. R. 422 (F. B.).

CRIMINAL proceedings are bad unless they are conducted in the manner prescribed by law; and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused. No man should sit as a Judge in a case in which he has a substantial interest. A Magistrate should not give evidence in a case in which he is acting judicially, if he can possibly avoid doing so.—*Reg. v. Bhola Nath Sein*, 25 W. R. 57. The facts of this case, taken from the Indian Law Reports, are set out in full in the last para. of this page.

IN a case in which a Deputy Magistrate took an active part in the capture of parties charged with having been members of an unlawful assembly—parties whom he himself tried on that charge—it was held that he was bound to state to the accused, so far as he could, what were the facts he himself observed, and to which he himself could bear testimony: and the prisoner in such situation had a right, if he thought it desirable, to cross-examine the Judge, whose evidence should be recorded, and form part of the record in the case. The proper course, however, for the Deputy Magistrate to have taken in this case would have been to decline to try the case, and to ask that it should be undertaken by some other Judge.—*Hurro Chunder Paul and others, Petitioners*, 20 W. R. 76.

A, ALLEGED to have carried on business in Calcutta without having taken out a license under Bengal Act IV. of 1876, was summoned, at the instance of the Corporation, by B, a servant of the Corporation, and also a Justice of the Peace. The case was subsequently heard by B, and it was shown that notice of the assessment under class ii., sched. 3, had been duly served on A, and that, though he then denied his liability to take out any license, and stated that he carried on no business as alleged, he had not appealed against the assessment under s. 79. It was further shown that the assessment had been confirmed by the Chairman of the Corporation, but that the amount had not been paid. A thereupon tendered evidence to show that he was not liable to take out any license; but B refused to hear such evidence, and, convicting A, sentenced him to pay a fine. On an application, under the above circumstances, to the High Court under s. 147, Act X. of 1875 (s. 526 of this Code): *Held* that the finality of the decision of the Chairman referred to in s. 79 has only reference to the class under which a particular person, who is admittedly bound to take out a license under s. 75, should be assessed, and not to the case where the liability to take out a license at all is denied, this being a question which can only be determined judicially after taking evidence by a competent Court in a prosecution under s. 77, and that, therefore, the refusal of B to hear the evidence tendered by A on this point was illegal. *Held* also that the proceedings and ultimate conviction of A were illegal, inasmuch as B, being a servant of the prosecutor, *i.e.*, the Corporation, had such an interest as might have given him a bias in the matter, and that, consequently, he ought not to have sat as Justice of the Peace either at the granting or upon the hearing of the summons.—*Wood v. The Corporation of the Town of Calcutta*, I. L. R., 7 Cal. 322.

THE jailor of a district jail being accused by one of the jail-clerks of falsifying his accounts, and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial

SCHEDULE I.

ENACTMENTS REPEALED.

(a.)—*Statute.*

Year, reign, and chapter.	Title.	Extent of repeal.
13 Geo. III., chapter 63	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(b.)—*Acts of the Governor-General in Council.*

Number and year.	Subject.	Extent of repeal.
XXIII. of 1840 ...	Execution of process ...	So much as has not been repealed.
XLV. of 1860 ...	Penal Code ...	The illustrations to section 214.
V. of 1861 ...	Police Act ...	Section 6 and the last nine words of section 24. Section 35, down to and including the words "Provided that."
XVIII. of 1862 ...	Criminal Procedure, Supreme Courts.	So much as has not been repealed.
VI. of 1864 ...	Whipping ...	Section 7.
II. of 1869 ...	Justices of the Peace ...	So much as has not been repealed.
XXII. of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV. of 1872 ...	Panjáb Laws ...	So far as it relates to Bengal Regulation XX. of 1825.
X. of 1872 ...	The Code of Criminal Procedure.	So much as has not been repealed.
XI. of 1874 ...	Amending the Code of Criminal Procedure.	The whole.
XV. of 1874 ...	Laws Local Extent ...	So far as it relates to Bengal Regulation XX. of 1825.

SCHEDULE I.—(continued).

ENACTMENTS REPEALED—(continued).

(b.)—Acts of the Governor-General in Council—(continued).

Number and year.	Subject.			Extent of repeal.
X. of 1875 ...	High Courts' Criminal Procedure.			The whole Act, except section 144 and so much of section 146 as relates to informations.
XX. of 1875 ...	Central Provinces Laws	...	...	So far as it relates to Bengal Regulation XX. of 1825.
XVIII. of 1876 ...	Oudh Laws	...	...	Ditto.
IV. of 1877 ...	Presidency Magistrates	...	...	The whole Act, except section 57.
XXI. of 1879 ...	Extradition	...	...	Chapter III.
X. of 1881 ...	Coroners	...	...	Sections 8 and 9.

(c.)—Regulations.

Number and year.	Subject.			Extent of repeal.
Bengal Regulation XX. of 1825.	Jurisdiction of Courts Martial.			So much as has not been repealed.
III. of 1872 ...	Santhál Parganas Settlement...	...	...	So far as it relates to Act X. of 1872.
IX. of 1874 ...	Arakan Hills District Laws	...	...	So far as it relates to Acts II. of 1869, X. of 1872, and XI. of 1874.
III. of 1877 ...	Ajmer Laws	...	...	So far as it relates to Bengal Regulation XX. of 1825.

(d.)—Act of the Governor of Fort St. George in Council.

Number and year.	Subject.			Extent of repeal.
VIII. of 1867 ...	Police	...	...	Section 9.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrested for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may be issued for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.

CHAPTER V.—ABETMENT—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	May arrest without warrant, if the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
111	Abetment of any offence, when one act is abetted and a different act is done ; subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.

114	Abetment of any offence, if abettor is present when offence is committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	Not bailable.	...	Ditto	...	Ditto.
	If an act which causes harm be done in consequence of the abetment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	According as the offence abetted is bailable or not.	...	Ditto	...	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto	...	Ditto	...	Not bailable.	...	Ditto	...	Ditto.
	If the offence be not committed ...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.

CHAPTER V.—ABETMENT—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
	If the offence be punishable with death or transportation for life.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed ...	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
	If the offence be not committed ...	Ditto	...	Ditto	...	Ditto	...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	...	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto	Ditto	Ditto	Ditto	Transportation for life or any shorter term, or imprisonment of either description for ten years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for ten years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for ten years and fine.	Ditto.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
124A	Exciting, or attempting to excite, disaffection.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Court of Session.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto	Ditto	Ditto	Ditto	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto	...	Ditto	...	Not bailable.	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	May arrest without warrant.	...	Warrant	...	Not bailable.	...	Not compoundable.	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Death, or transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
133	Abetment of an assault by an officer, soldier, or sailor on his superior officer, when in the execution of his office.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court-able.
135	Abetment of the desertion of an officer, soldier, or sailor.	May arrest without war-rant.	Warrant ...	Bailable ...	Not com-poundable.	Imprisonment of either de-scription for 2 years, or fine, or both.	Presidency Magistrate of the first or se-cond class.
136	Harbouring such an officer, soldier, or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
137	Deserter concealed on board mer-chant-vessel, through negligence of master or person in charge thereof.	Shall not ar-rest without warrant.	Summons ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in con-quence.	May arrest without war-rant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with in-tent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 3 months, or fine of 500 rupees, or both.	Any Magis-trate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ...	Not punishable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
143							
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto	The same as for the offence ...	The Court by which the offence is triable.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed.	Ditto ...	Ditto	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed. If not committed ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both. Fine of 1,000 rupees ...	Ditto. Presidency Magistrate or Magistrate of the first or second class.

155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto	...	Ditto	...	Ditto	...	Fine	...	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	...	Ditto	...	Ditto	...	Imprisonment of either description for six months, or fine, or both.	...	Ditto.
158	Being hired to take part in an unlawful assembly or riot. Or to go armed	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
160	Committing affray	Shall not arrest without warrant.	...	Warrant	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	...	Ditto.
				Summons	...	Ditto	...	Imprisonment of either description for one month, or fine of 100 rupees, or both.	...	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons	...	Bailable	...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
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CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant	May arrest without warrant.	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
172	Abscinding to avoid service of summons or other proceeding from a public servant. If summons or notice require attendance in person, &c., in a Court of Justice.	Shall not arrest without warrant. Ditto ...	Summons ... Ditto ...	Bailable ... Ditto ...	Not compoundable. Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate. Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class. Ditto.
174	If summons, &c., require attendance in person, &c., in a Court of Justice. Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority. If the order require personal attendance, &c., in a Court of Justice.	Ditto ... Ditto ... Ditto ...	Ditto ... Ditto ... Ditto ...	Ditto ... Ditto ... Ditto ...	Ditto ... Ditto ... Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate. Any Magistrate. Ditto.

75	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, submitted, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate, or Magistrate of the first or second class.
		Ditto	...	Ditto	...	Ditto	...	...	Ditto.
		Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
76	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
		Ditto	...	Ditto	...	Ditto	...	...	Ditto.
		Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
77	If the notice or information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
		Ditto	...	Ditto	...	Ditto	...	...	Ditto.
		Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years or fine, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether committal or not.	Punishment under the Indian Penal Code.	By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not committal.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate, or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.

81	Knowingly stating to a public servant on oath as true that which is false.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(continued).

Section.	1	2	3	4	5	6	7	8
		Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
188		Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance, or injury to persons lawfully employed. If such disobedience causes danger to human life, health, or safety, &c.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not com-poundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both. Imprisonment or either description for 6 months, or fine of 1,000 rupees, or both.	Pre s i d e n c y Magistrate or Magistrate of the first or second class. Ditto.
189		Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190		Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

	Shall not arrest without warrant.	Warrant	Bailable	Not punishable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
193	Giving or fabricating false evidence in a judicial proceeding.	...	...	...	...	...
	Giving or fabricating false evidence in any other case.	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	...	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto	Ditto	Ditto	Death, or as above	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto	Ditto	Ditto	The same as for the offence ...	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	According as the offence of giving such evidence is bailable or not.	Ditto	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	The same as for giving false evidence.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

202	If punishable with transportation for life or imprisonment for ten years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If punishable with less than 10 years imprisonment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	...	Summons ...	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto	...	Warrant ...	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.

210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If punishable with transportation for life or with imprisonment for 10 years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session.

If punishable with transportation for life or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
If with imprisonment for less than 10 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, with or without fine.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If with imprisonment for 1 year, and not for 10 years.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate, or Magistrate of the first class, or Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto	Warrant ...	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.

219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the class.
	If with imprisonment for less than 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, with or without fine.	President Magistrate or Magistrate of first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend a person under sentence of a Court of Justice, if under sentence of death.	Ditto	...	Ditto	...	Ditto	...	Not bailable.	Ditto	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment, or penal servitude for 10 years or upwards.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto	Imprisonment of either description for 7 years, with or without fine.	Ditto.

225A	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	...	...	Not bailable.	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session. Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence...	...	Ditto	Ditto	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	...	Ditto	Ditto	Ditto	...	Ditto	Ditto.
225B	If under sentence of death	...	Ditto	Ditto	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	...	Ditto	Bailable	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation.	...	Ditto	Not bailable.	Ditto	...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons	Ditto	Ditto	...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
229	Personation of a juror or assessor...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
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232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
236	If Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeited.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
238	Import or export of counterfeit of the Queen's coin, knowing the same to be counterfeit.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.

242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
250	Delivery to another of coin possessed with the knowledge that it is altered.	May arrest without war-ran.	Warrant ...	Not bailable.	Not com-poundable.	Imprisonment of either de-scription for 5 years and fine.	Court of Ses-sion, Presi-dency Ma-gistrate, or Magistrate of the first class.
251	Delivery of Queen's coin possessed with the knowledge that it is al-tered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 10 years and fine.	Ditto.
252	Possession of altered coin by a per-son who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 3 years and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first pos-sessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or se-cond class.

255	Counterfeiting a Government stamp.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
258	Sale of counterfeit Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
263	Erasure of mark denoting that stamp has been used.	May arrest without war-rant.	Warrant ...	Bailable ...	Not com-poundable.	Imprisonment of either de-scription for 3 years, or fine, or both.	Court of Ses-sion, Presi-dency Ma-gistrate, or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

		Shall not ar-rest with-out war-rant.	Summons...	Bailable ...	Not com-poundable.	Imprisonment of either de-scription for 1 year, or fine, or both.	Presidency Magistrate or Magis-trate of the first or se-cond class.
264	Fraudulent use of false instrument for weighing.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE,
DECENCY, AND MORALS.

	May arrest without warrant.	Summons ...	Bailable	...	Not com- poundable.	Imprisonment of either de- scription for 6 months, or fine, or both.	Presidency Magistrate or Magis- trate of the first or se- cond class.
269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.						
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto	Ditto	...	Ditto	...	Ditto.
271	Knowingly disobeying any quaran- tine rule.	Shall not ar- rest with- out war- rant.	Ditto	...	Ditto	...	Ditto.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto	Ditto	...	Ditto	...	Ditto.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto	Ditto	...	Ditto	...	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	Ditto	...	Ditto	...	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	Ditto	...	Ditto	...	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	Ditto	...	Ditto	...	Ditto.

CHAPTER XIV—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Summons ...	Bailable ...	Not com-poundable.	Imprisonment of either de-scription for 3 months, or fine of 500 rupees, or both.	Any Magis-trate.
278	Making atmosphere noxious to health.	Shall not ar-rest with-out war-rant.	Ditto ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
279	Driving or riding on a public way so rashly or negligently as to en-danger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magis-trate of the first or se-cond class.
281	Exhibition of a false light, mark, or buoy.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 7 years, or fine, or both.	Court of Ses-sion.

282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto	...	Summons ...	Ditto	...	Ditto	...	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto	...	Ditto	Ditto	...	Ditto	...	...	Fine of 200 rupees	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto	...	Ditto	Ditto	...	Ditto	...	...	Ditto	Ditto.
287	So dealing with any machinery	Shall not arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto	...	Ditto	Ditto	...	Ditto	...	...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	...	Ditto	Any Magistrate.
290	Committing a public nuisance	Shall not arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	...	Fine of 200 rupees	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE,
DECENCY, AND MORALS—(*concluded*).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c. ...	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
294 294A	Obscene songs ... Keeping a lottery-office ...	Ditto ... Shall not arrest without warrant.	Ditto ... Summons ...	Ditto ... Ditto ...	Ditto ... Ditto ...	Ditto ... Imprisonment of either description for 6 months, or fine, or both.	Ditto. Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
295							
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Compoundable.	Ditto ...	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.
Of Offences affecting Life.

	Murder ...	...	...	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
302				Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death ...	Ditto.
303	Murder by a person under sentence of transportation for life.								

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(continued).
Of Offences affecting Life—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c. If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
		Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.

306	Abetting the commission of suicide	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder ... If such act cause hurt to any person	Ditto	...	Ditto	...	Ditto	...	... Ditto Transportation for life, or as above	Ditto. Ditto.
308	Attempt by life-convict to murder, if hurt is caused. Attempt to commit culpable homicide.	Ditto	...	Ditto	...	Ditto	...	... Death, or as above	Ditto.
		Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for one year, or fine, or both.	President, Magistrate or Magistrate of the first or second class.
311	Being a thug.	Ditto	...	Ditto	...	Ditto	...	Transportation for life and fine.	Court of Sessions.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage ...	...	Shall not arrest without warrant.	Warrant	...	Bailable	...	Not compoundable.	Court of Sessions.
	If the woman be quick with child...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(continued).
Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
313	Causing miscarriage without woman's consent.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for 10 years and fine.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
317						Imprisonment of either description for 7 years, or fine, or both.	Ditto.

318	Concealment of birth by secret disposal of dead body.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
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Of Hurt.

323	Voluntarily causing hurt	...	Shall not arrest without warrant.	Summons...	Bailable	...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	...	May arrest without warrant.	Ditto	Ditto	...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt...	Ditto	Ditto	Ditto	Ditto	...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto	Ditto	Ditto	Not bailable.	...	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(continued).
Of Hurt—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	May arrest without warrant.	Warrant ...	Not bailable.	Not com-poundable.	Imprisonment of either de-scription for 10 years and fine.	Court of Ses-sion.
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facili-tate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either de-scription for ten years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either de-scription for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or informa-tion, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either de-scription for 10 years and fine.	Ditto.

332	Voluntarily causing hurt to deter public servant from his duty.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto	...	Ditto	...	Not bailable.	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	...	Summons	...	Bailable	...	Compoundable.	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	...	Ditto	...	Ditto	...	Compoundable when permission is given by the Court before which a prosecution is pending.	...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto	...	Ditto	...	Ditto	...	Not compoundable.	...	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto	...	Ditto	...	Ditto	...	Compoundable when permission is given by the Court before which a prosecution is pending.	...	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(continued).

Of Wrongful Restraint and Wrongful Confinement.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
141	Wrongfully restraining any person.	May arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
142	Wrongfully confining any person...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
143	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.
144	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto	...	Ditto.	Ditto	...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto	...	Ditto.	Ditto	...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto	Ditto	...	Ditto	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto	Ditto	...	Ditto	Ditto	...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable	...	Compoundable.	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto	...	Not compoundable.	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(continued).
Of Criminal Force and Assault—(continued).

1	2	3	4	5	6	7	8
	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class. Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Ditto ...	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Ditto ...	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Abduction, Slavery, and Forced Labour.

	Kidnapping	...	...	May arrest without warrant.	Warrant ...	Not bailable.	Not com- poundable.	Imprisonment of either de- scription for 7 years and fine.	Court of Ses- sion, Presi- dency Ma- gistrate, or Magistrate of the first class.
363	Kidnapping	...	...	...	...	...	...	...	Court of Ses- sion, Presi- dency Ma- gistrate, or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	...	...	Ditto	Ditto	Ditto	Ditto	...	Court of Ses- sion.
365	Kidnapping or abducting with in- tent secretly and wrongfully to confine a person.	...	...	Ditto	Ditto	Ditto	Ditto	...	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	...	...	Ditto	Ditto	Ditto	Ditto	...	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	...	...	Ditto	Ditto	Ditto	Ditto	...	Ditto.
368	Concealing or keeping in confine- ment a kidnapped person.	...	...	Ditto	Ditto	Ditto	Ditto	...	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	...	...	Ditto	Ditto	Ditto	Ditto	...	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(concluded).
Of Kidnapping, Abduction, Slavery, and Forced Labour—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the fit instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
371	Habitual dealing in slaves ...	May arrest without warrant.	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

Of Rape.

376	Rape	May arrest without warrant.	Warrant ...	Not bailable.	Not punishable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
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Of Unnatural Offences.

377	Unnatural offences	May arrest without warrant.	Warrant ...	Not bailable.	Not punishable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
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CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant ...	Not bailable.	Not punishable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent, or vessel.	...	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	...	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	...	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(continued).
Of Extortion.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
384	Extortion ...	...	...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session. Presidency Magistrate, or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

389	If the offence threatened be an unnatural offence.	Ditto	...	Ditto	...	Ditto	...	Transportation for life	...	Ditto.
	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	...	Ditto.
	If the offence be an unnatural offence.	Ditto	...	Ditto	...	Ditto	...	Transportation for life	...	Ditto.

Of Robbery and Dacoity.

	Robbery ...	...	...	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
392	If committed on the highway between sunset and sunrise. Attempt to commit robbery	...	...	Ditto	Ditto	...	Ditto	Rigorous imprisonment for 14 years and fine.	Ditto.
393		...	...	Ditto	Ditto	...	Ditto	Rigorous imprisonment for 7 years and fine.	Ditto.
394		Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	...	Ditto	Ditto	...	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
395	Dacoity ...	...	...	Ditto	Ditto	...	Ditto	Ditto	Court of Session.
396	Murder in dacoity	...	...	Ditto	Ditto	...	Ditto	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	...	...	Ditto	Ditto	...	Ditto	Rigorous imprisonment for not less than 7 years.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(continued).
Of Robbery and Dacoity—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or shall ordinarily issue in the first instance	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	May arrest without warrant.	Warrant ...	Not bailable	Not com-poundable.	Rigorous imprisonment for not less than 7 years.	Court of Ses-sion.
399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associ-ated for the purpose of habi-tually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or ri-gorous imprisonment for 10 years, and fine.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of com-mitting dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
<i>Of Criminal Misappropriation of Property.</i>							
403	Dishonest misappropriation of move-able property, or converting it to one's own use.	Shall not ar-rest with-out warrant.	Warrant ...	Bailable ...	Not com-poundable.	Imprisonment of either de-scription for 2 years, or fine, or both.	Any Magis-trate.

404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
	If by clerk or person employed by deceased.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
<i>Of Criminal Breach of Trust.</i>									
406	Criminal breach of trust	...	May arrest without warrant.	Warrant	...	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(continued).

Of Criminal Breach of Trust—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.

413	Habitually dealing in stolen property.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

417	Cheating	...	...	Shall not arrest without warrant.	Warrant	...	Bailable	...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law, or by legal contract, to protect.	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
419	Cheating by personation	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration, or destruction of a valuable security.	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(continued).
Of *Fraudulent Deeds and Dispositions of Property.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

Of Mischief.

126	Mischief ...	...	...	Shall not arrest without warrant.	Summons ...	Bailable	...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
127	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	...	...	Ditto	Warrant	...	...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
128	Mischief by killing, poisoning, maiming, or rendering useless any animal of the value of 10 rupees or upwards.	...	...	May arrest without warrant.	Ditto	...	...	Not compoundable.	Ditto	...
129	Mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	...	...	Ditto	Ditto	...	...	Ditto	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
130	Mischief by causing diminution of supply of water for agricultural purposes, &c.	...	...	Ditto	Ditto	...	...	Ditto	Ditto	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(continued).
Of Criminal Trespass—(continued).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
1449	House-trespass in order to the commission of an offence punishable with death.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
1450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
1451	House-trespass in order to the commission of an offence punishable with imprisonment. If the offence is theft	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
		Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
1452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

153	Lurking house-trespass or house-breaking.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 2 years and fine.	Ditto	Presidency Magistrate or Magistrate of the first or second class.
154	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years and fine.	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
155	If the offence is theft	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 10 years and fine.	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
156	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years and fine.	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
157	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 5 years and fine.	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
	If the offence is theft	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 14 years and fine.	Ditto	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(concluded).
Of Criminal Breach of Trust—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 14 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto	...	Not bailable.	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
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CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery	Shall not arrest without warrant.	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a register of births, &c., kept by a public servant.	Ditto	Ditto	Not bailable.	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c. When the valuable security is a promissory note of the Government of India.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
468	Forgery for the purpose of cheating.	May arrest without warrant.	Ditto	Ditto	Ditto	Ditto	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Shall not arrest without warrant.	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
		Ditto	Ditto	Ditto	Ditto	Punishment for forgery	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE
OR PROPERTY-MARKS—(continued.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	When the forged document is a promissory note of the Government of India.	May arrest with out warrant.	Warrant ...	Not bailable.	Not com-poundable.	Punishment for forgery ...	Court of Ses-sion.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest with-out war-rant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either de-scription for 7 years, and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeited.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 7 years and fine.	Ditto.

474	Having possession of a document, knowing it to be forged, with intent to use it as genuine ; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 7 years, and fine.	...	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	...	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 7 years, and fine.	...	Ditto.
<i>Of Trade and Property-Marks.</i>												
482	Using a false trade or property-mark intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant	...	Bailable	...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.			

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR
PROPERTY-MARKS—(concluded).

Of Trade and Property-Marks—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
483	Counterfeiting a trade or property-mark used by another with intent to cause damage or injury.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable	...	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
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CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.

491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
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494	Marrying again during the lifetime of a husband or wife	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto	...	Ditto	...	Not bailable.	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery.	Ditto	...	Ditto	...	Bailable	...	Compoundable.	...	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation	...	...	Shall not arrest without warrant.	Warrant	...	Bailable	...	Compoundable.	Simple imprisonment for 2 years, or fine, or both,	Court of Session, Presidency Magistrate, or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto	...	Ditto.

CHAPTER XXI.—DEFAMATION—(concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Ditto ...	Presidency Magistrate or Magistrate of the first or second class.

506	Criminal intimidation	...	Ditto	...	Ditto	...	Bailable	...	Compoundable.	Ditto	...	Ditto.
	If threat be to cause death or grievous hurt, &c.	...	Ditto	...	Ditto	...	Ditto	...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	...	Court of Session, Presidency Magistrate, or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 2 years, in addition to the punishment under above section.	...	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of divine displeasure.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 1 year, or fine, or both.	...	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 1 year, or fine, or both.	...	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	...	Any Magistrate.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compounding the offence is attempted or not.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, transportation or imprisonment for seven years, or upwards.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.
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If punishable with imprisonment for three years and upwards, but less than seven.	Ditto	...	Ditto	...	Ditto	...	Ditto
					Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.	...	Ditto	...	.....
If punishable with imprisonment for less than three years.	Shall not arrest without warrant		Summons...	...	Bailable	...	Ditto	...	.....
If punishable with fine only	Ditto	...	Ditto	...	Ditto	...	Ditto	...	.....

According to the provisions of section 29 of this Code.

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

- (1) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
- (2) Power to endorse a warrant, or to order the removal of an accused person, arrested under a warrant, sections 83, 84, and 86.
- (3) Power to issue proclamations in cases judicially before him, section 87.
- (4) Power to attach and sell property in cases judicially before him, section 88.
- (5) Power to restore attached property, section 89.
- (6) Power to issue search-warrant, section 96.
- (7) Power to endorse a search-warrant and order delivery of thing found, section 99.
- (8) Power to record statements or confessions during a police-investigation, section 164.
- (9) Power to authorize detention of a person during a police-investigation, section 167.
- (10) Power to detain an offender found in Court, section 351.
- (11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) Power to require security to keep the peace, section 107.
- (5) Power to require security for good behaviour, section 109.
- (6) Power to make orders, &c., in possession cases, sections 145, 146, and 147.
- (7) Power to commit for trial, section 206.
- (8) Power to stop proceedings when no complainant, section 249.
- (9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

- (1) The ordinary powers of a Magistrate of the first class.
- (2) Power to direct warrants to landholders, section 78.
- (3) Power to make orders as to local nuisances, section 133.
- (4) Power to make orders prohibiting repetitions of nuisances, section 143.
- (5) Power to make orders under section 144.
- (6) Power to hold inquests, section 174.
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (8) Power to entertain complaints, section 191.
- (9) Power to receive police-reports, section 191.
- (10) Power to entertain cases without complaint, section 191.
- (11) Power to transfer cases to a Subordinate Magistrate, section 192.
- (12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
- (13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
- (14) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

V.—Ordinary Powers of a District Magistrate.

- (1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
- (2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
- (3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
- (4) Power to cancel bond for keeping the peace, section 125.
- (5) Power to try summarily, section 260.
- (9) Power to quash convictions in certain cases, section, 350.
- (7) Power to hear appeals from orders requiring security for good behaviour, section 406.
- (8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
- (9) Power to call for records, section 435.
- (10) Power to revise orders passed under section 514 ; section 515.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES
MAY BE INVESTED.

POWERS WITH
WHICH A MAGIS-
TRATE OF THE
FIRST CLASS MAY
BE INVESTED

BY THE LOCAL
GOVERNMENT

BY THE DIS-
TRICT MAGIS-
TRATE

- (1) Power to require security for good behaviour, section 110 :
- (2) Power to make orders as to local nuisances, section 133 :
- (3) Power to make orders prohibiting repetitions of nuisances, section 143 :
- (4) Power to make orders under section 144 :
- (5) Power to hold inquests, section 174 :
- (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186 :
- (7) Power to take cognizance of offences upon complaint, section 191 :
- (8) Power to take cognizance of offences upon police-reports, section 191 :
- (9) Power to take cognizance of offences upon information, section 191 :
- (10) Power to try summarily, section 260 :
- (11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407 :
- (12) Power to sell property alleged or suspected to have been stolen, &c., section 524
- (1) Power to make orders prohibiting repetitions of nuisances, section 143 :
- (2) Power to make orders under section 144 :
- (3) Power to hold inquests, section 174 :
- (4) Power to take cognizance of offences upon complaint, section 191 :
- (5) Power to take cognizance of offences upon police-reports, section 191 :
- (6) Power to transfer cases, section 192.

SCHEDULE IV.—(concluded).

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES
MAY BE INVESTED—(concluded).

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	<ul style="list-style-type: none"> (1) Power to pass sentences of whipping, section 32 : (2) Power to make orders prohibiting repetitions of nuisances, section 143 : (3) Power to make orders under section 144 : (4) Power to hold inquests, section 174 : (5) Power to take cognizance of offences upon complaint, section 191 : (6) Power to take cognizance of offences upon police-reports, section 191 : (7) Power to take cognizance of offences upon information, section 191 : (8) Power to commit for trial, section 206.
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE DISTRICT MAGISTRATE	<ul style="list-style-type: none"> (1) Power to make orders prohibiting repetitions of nuisances, section 142 : (2) Power to make orders under section 144 : (3) Power to hold inquests, section 174 : (4) Power to take cognizance of offences upon complaint, section 191 : (5) Power to take cognizance of offences upon police-reports, section 191.
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	<ul style="list-style-type: none"> (1) Power to make orders prohibiting repetitions of nuisances, section 143 : (2) Power to make orders under section 144 : (3) Power to hold inquests, section 174 : (4) Power to take cognizance of offences upon complaint, section 191 : (5) Power to take cognizance of offences upon police-reports, section 191 : (6) Power to commit for trial, section 206.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED	BY THE DISTRICT MAGISTRATE	<ul style="list-style-type: none"> (1) Power to make orders prohibiting repetitions of nuisances, section 143 : (2) Power to make orders under section 144 : (3) Power to hold inquests, section 174 : (4) Power to take cognizance of offences upon complaint, section 191 : (5) Power to take cognizance of offences upon police-reports, section 191.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED	BY THE LOCAL GOVERNMENT	Power to call for records, section 435.

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(See section 68.)

To _____ of _____ .

WHEREAS your attendance is necessary to answer to a charge of [state shortly the offence charged], you are hereby required to appear in person [or by pleader, as the case may be], before the [Magistrate] of _____, on the _____ day of _____ . Herein fail not.

Dated this _____ day of _____, 18 .

[Seal.]

[Signature.]

II.—WARRANT OF ARREST.

(See section 75.)

To [name and designation of the person or persons who is or are to execute the warrant].

WHEREAS _____ of _____ stands charged with the offence of [state the offence], you are hereby directed to arrest the said _____, and to produce him before me. Herein fail not.

Dated this _____ day of _____, 18 .

[Seal.]

[Signature.]

(See section 76.)

This warrant may be endorsed as follows :—

If the said _____ shall give bail himself in the sum of _____, with one surety in the sum of _____ [or two sureties each in the sum of _____], to attend before me on the _____ day of _____, and to continue so to attend until otherwise directed by me, he may be released.

Dated this _____ day of _____, 18 .

[Signature.]

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I, [name], of _____, being brought before the District Magistrate of _____ [or as the case may be] under a warrant issued to compel my appearance to answer to the charge of _____, do hereby bind myself to attend in the Court of _____ on the _____ day of _____ next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of _____ rupees .

Dated this _____ day of _____, 18 .

[Signature.]

I do hereby declare myself surety for the abovenamed _____ of _____, that he shall attend before _____ in the Court of _____ on the _____ day of _____ next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of _____ rupees .

Dated this _____ day of _____, 18 .

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A
PERSON ACCUSED.

(See section 87.)

WHEREAS complaint has been made before me that [*name, description, and address*] has committed [*or is suspected to have committed*] the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [*name*] cannot be found ; and whereas it has been shown to my satisfaction that the said [*name*] has absconded [*or is concealing himself to avoid the service of the said warrant*] ;

Proclamation is hereby made that the said of is required to appear at [*place*] before this Court [*or before me*] to answer the said complaint within days from this date.

Dated this day of , 18 .

[Seal.]

[Signature.]

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(See section 87.)

WHEREAS complaint has been made before me that [*name, description, and address*] has committed [*or is suspected to have committed*] the offence of [*mention the offence concisely*], and a warrant has been issued to compel the attendance of [*name, description, and address of the witness*] before this Court to be examined touching the matter of the said complaint ; and whereas it has been returned to the said warrant that the said [*name of witness*] cannot be served, and it has been shown to my satisfaction that he has absconded [*or is concealing himself to avoid the service of the said warrant*] ;

Proclamation is hereby made that the said [*name*] is required to appear at [*place*] before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of , 18 .

[Seal.]

[Signature.]

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE
OF A WITNESS.

(See section 88.)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of [*name, description, and address*] to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served ; and whereas it has been shown to my satisfaction that he has absconded [*or is concealing himself to avoid the service of the said warrant*] ; and thereupon a proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear ;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees , which you may find within the District of , and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

[Seal.]

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE
OF A PERSON ACCUSED.

(See section 88.)

To [name and designation of the person or persons who is or are to execute the warrant].

WHEREAS complaint has been made before me that [name, description, and address] has committed [or is suspected to have committed] the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [name] cannot be found; and whereas it has been shown to my satisfaction that the said [name] has absconded [or is concealing himself to avoid the service of the said warrant], and thereupon a proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village [or town] of , in the District of , viz., , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

[Seal.]

[Signature.]

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY
COMMISSIONER AS COLLECTOR.

(See section 88.)

To the Deputy Commissioner of the District of .

WHEREAS complaint has been made before me that [name, description, and address] has committed [or is suspected to have committed] the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [name] cannot be found; and whereas it has been shown to my satisfaction that the said [name] has absconded [or is concealing himself to avoid the service of the said warrant], and thereupon a proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village [or town] of in the District of ;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

[Seal.]

[Signature.]

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.
(See section 90.)

To [name and designation of the Police-officer or other person or persons who is or are to execute the warrant].

WHEREAS complaint has been made before me that of has [or is suspected to have] committed the offence of [mention the offence concisely], and it appears likely that [name and description of witness] can give evidence concerning

SCHEDULE V.—(continued).

FORMS—(continued).

the said complaint ; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so ;

This is to authorize and require you to arrest the said [name], and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To [name and designation of the Police-officer or other person or persons who is or are to execute the warrant].

WHEREAS information has been laid [or complaint has been made] before me of the commission [or suspected commission] of the offence of [mention the offence concisely], and it has been made to appear to me that the production of [specify the thing clearly] is essential to the inquiry now being made [or about to be made] into the said offence [or suspected offence] ;

This is to authorize and require you to search for the said [the thing specified] in the [describe the house or place, or part thereof, to which the search is to be confined], and, if found, to produce the same forthwith before this Court ; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(See section 98.)

To [name and designation of a Police-officer above the rank of a Constable].

WHEREAS information has been laid before me, and, on due enquiry thereupon had, I have been led to believe that the house [describe the house or other place] is used as a place for the deposit [or sale] of stolen property [or, if for either of the other purposes expressed in the section, state the purpose in the words of the section] ;

This is to authorize and require you to enter the said house [or other place] with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house [or other place, or, if the search is to be confined to a part, specify the part clearly], and to seize and take possession of any property [or documents, or stamps, or seals, or coins, as the case may be]—[Add (when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (as the case may be)], and forthwith to bring before this Court such of the said things as may be taken possession of ; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

X.—BOND TO KEEP THE PEACE.

(See section 106.)

WHEREAS I, [name], inhabitant of [place], have been called upon to enter into a bond to keep the peace for the term of _____, I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____.

Dated this _____ day of _____, 18 ____.

[Signature.]

XI.—BOND FOR GOOD BEHAVIOUR.

(See sections 109 and 110.)

WHEREAS I, [name], inhabitant of [place], have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of [state the period], I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees _____.

Dated this _____ day of _____, 18 ____.

[Signature.]

[Where a bond with sureties is to be executed, add]—We do hereby declare ourselves sureties for the abovenamed _____ that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees _____.

Dated this _____ day of _____, 18 ____.

[Signature.]

XII.—SUMMONS ON INFORMATION OF A PROBABLE

BREACH OF THE PEACE.

(See section 114.)

To _____ of _____.

WHEREAS it has been made to appear to me by credible information that [state the substance of the information], and that you are likely to commit a breach of the peace [or by which act a breach of the peace will probably be occasioned], you are hereby required to attend in person [or by a duly authorized agent] at the Office of the Magistrate of _____ on the _____ day of _____, 18 ____, at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees _____ [when sureties are required, add and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees _____ (each, if more than one)], that you will keep the peace for the term of _____.

Given under my hand and the seal of the Court, this _____ day of _____, 18 ____.

[Seal.]

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND
SECURITY TO KEEP THE PEACE.

(See section 123.)

To the Superintendent [or Keeper] of the Jail at .

WHEREAS [name and address] appeared before me in person [or by his authorized agent] on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety [or a bond with two sureties each in rupees], that he the said [name] would keep the peace for the period of months ; and whereas an order was then made requiring the said [name] to enter into and find such security [state the security ordered when it differs from that mentioned in the summons], and he has failed to comply with the said order ;

This is to authorize and require you the said Superintendent [or Keeper] to receive the said [name] into your custody together with this warrant, and him safely to keep in the said jail for the said period of [term of imprisonment], unless he shall in the meantime comply with the said order by himself and his surety [or sureties] entering into the said bond, in which case the same shall be received, and the said [name] released ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18
[Seal.] [Signature.]

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND
SECURITY FOR GOOD BEHAVIOUR.

(See section 123.)

To the Superintendent [or Keeper] of the Jail at .

WHEREAS it has been made to appear to me that [name and description] has been and is lurking within the District of having no ostensible means of subsistence [or, and that he is unable to give any satisfactory account of himself] ;

or

WHEREAS evidence of the general character of [name and description] has been adduced before me, and recorded, from which it appears that he is an habitual robber [or house-breaker, &c., as the case may be] ;

And whereas an order has been recorded, stating the same, and requiring the said [name] to furnish security for his good behaviour for the term of [state the period] by entering into a bond with one surety [or two or more sureties, as the case may be], himself for rupees , and the said surety [or each of the said sureties] for rupees , and the said [name] has failed to comply with the said order, and for such default has been adjudged imprisonment for [state the term] unless the said security be sooner furnished ;

This is to authorize and require you the said Superintendent [or Keeper] to receive the said [name] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [term of imprisonment], unless he shall in the meantime comply with the said order by himself and his surety [or sureties] entering into the said bond, in which case the same shall be received, and the said [name] released ; and to return this warrant with an endorsement certifying the manner of its execution.

. Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED
ON FAILURE TO GIVE SECURITY.

(See sections 123 and 124.)

To the Superintendent [or Keeper] of the Jail at _____ [or other officer in
whose custody the person is].

WHEREAS [name and description of prisoner] was committed to your custody
under warrant of this Court, dated the _____ day of _____, and has since duly given
security under section _____ of the Code of Criminal Procedure,

and there have appeared to me sufficient grounds for the opinion that he can be
released without hazard to the community ;

This is to authorize and require you forthwith to discharge the said [name] from
your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this _____ day of _____, 18 ____.

[Seal.]

[Signature.]

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(See section 133.)

To [name, description, and address].

WHEREAS it has been made to appear to me that you have caused an obstruction
[or nuisance] to persons using the public roadway [or other public place], which, &c.
[describe the road or public place], by, &c. [state what it is that causes the obstruc-
tion or nuisance], and that such obstruction [or nuisance] still exists ;

WHEREAS it has been made to appear to me that you are carrying on as owner,
or manager, the trade or occupation of [state the particular trade or occupation, and
the place where it is carried on], and that the same is injurious to the public health
[or comfort] by reason [state briefly in what manner the injurious effects are
caused], and should be suppressed or removed to a different place ;

WHEREAS it has been made to appear to me that you are the owner [or are in
possession of, or have the control over] a certain tank [or well or excavation]
adjacent to the public way [describe the thoroughfare], and that the safety of the
public is endangered by reason of the said tank [or well or excavation] being
without a fence [or insecurely fenced] ;

WHEREAS, &c., &c. [as the case may be] ;

I do hereby direct and require you within [state the time allowed] to [state
what is required to be done to abate the nuisance], or to appear at _____ in
the _____ Court of _____ on the _____ day of _____ next, and to show cause why
this order should not be enforced ;

I do hereby direct and require you within [state the time allowed] to cease carry-
ing on the said trade or occupation at the said place, and not again to carry on the
same, or to remove the said trade from the place where it is now carried on,
or to appear, &c. ;

I do hereby direct and require you within [state the time allowed] to put a suffi-
cient fence [state the kind of fence and the part to be fenced], or to appear, &c. ;

I do hereby direct and require you, &c., &c. [as the case may be].

Given under my hand and the seal of the Court, this _____ day of _____, 18 ____.

[Seal.]

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 138.)

WHEREAS on the day of , 18 , an order was issued to [name], requiring him [state the effect of the order], and whereas the said [name] has applied to me by a petition, bearing date the day of , for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint [the names, &c., of the five or more Jurors] to be the Jury to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(See section 140.)

To [name, description, and address].

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you [state substantially the requisition in the order] is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within [state the time allowed] on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day , 18 .

[Seal.]

[Signature.]

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(See section 142)

To [name, description, and address.]

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper, is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to [state plainly what is required to be done as a temporary safe-guard], pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18 .

[Seal.]

[Signature.]

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &C., OF A NUISANCE.

(See section 143.)

To [name, description, and address].

WHEREAS it has been made to appear to me that, &c. [state the proper recital, guided by Form No. XVI. or Form No. XXI. as the case may be];

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. [as the case may be];

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &C.

(See section 144.)

To [name, description, and address].

WHEREAS it has been made to appear to me that you are in possession [or have the management] of [describe clearly the property], and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road ;

or

WHEREAS it has been made to appear to me that you and a number of other persons [mention the class of persons] are about to meet and proceed in a religious procession along the public street, &c. [as the case may be], and that such procession is likely to lead to a riot or an affray ;

or

WHEREAS, &c., &c. [as the case may be] ;

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road ;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not take any part in such procession [or as the case recited may require].

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED

TO RETAIN POSSESSION OF LAND, &C., IN DISPUTE.

(See section 145.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between [describe the parties by name and residence, or residence only if the dispute be between bodies of villagers] concerning certain [state concisely the subject of dispute] situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said [the subject of dispute], and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said [name or names or description] is true.

I do decide and declare that he is [or they are] in possession of the said [the subject of dispute] and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his [or their] possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18

[Seal.]

[Signature.]

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE
AS TO THE POSSESSION OF LAND, &C.

(See section 146.)

To the Police-officer in charge of the Police-station at [or To the Collector of].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between [describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers] concerning

SCHEDULE V.—(continued).

FORMS—(continued).

certain [*state concisely the subject of dispute*] situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said [*the subject of dispute*], and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said [*the subject of dispute*] [or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said [*the subject of dispute*] by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANY THING ON LAND OR WATER.

(See section 147.)

A DISPUTE having arisen concerning the right of use of [*state concisely the subject of dispute*] situate within the limits of my jurisdiction, the possession of which land [or water] is claimed exclusively by [*describe the person or persons*], and it appearing to me, on due inquiry into the same, that the said [land or water] has been open to the enjoyment of such use by the public [or *if by an individual or a class of persons, describe him or them*], and [*if the use can be enjoyed throughout the year*] that the said use has been enjoyed within three months of the institution of the said inquiry [or *if the use is enjoyable only at particular seasons, say "during the last of the seasons at which the same is capable of being enjoyed"*];

I do order that the said [*the claimant or claimants of possession*], or any one in their interest, shall not take [or retain] possession of the said land [or water] to the exclusion of the enjoyment of the right of use aforesaid, until he [or they] shall obtain the decree or order of a competent Court adjudging him [or them] to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(See section 169.)

I, [name], of , being charged with the offence of , and after inquiry required to appear before the Magistrate of ,

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next [or on such day as I may hereafter be required to attend], to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

I hereby declare myself [*or* We jointly and severally declare ourselves and each of us] surety [*or* sureties] for the above-said that he shall attend at , in the Court of , on the day of next [*or* on such day as he may hereafter be required to attend], further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself [*or* we hereby bind ourselves] to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

[Signature.]

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(See section 170.)

I, [name], of [place], do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute [*or* to prosecute and give evidence, *or* to give evidence] in the matter of a charge of against one A. B., and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

[Signature.]

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PLEADER.

(See section 218.)

THE Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. [*state the offence as in the charge*].

Dated this day of , 18 .

[Signature.]

XXVIII.—CHARGES.

(See sections 221, 222, 223.)

(I).—CHARGES WITH ONE HEAD.

(a) I, [name and office of Magistrate, &c.], hereby charge you [name of accused person] as follows :—

(b) That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court*].

(c) And I hereby direct that you be tried by the said Court on the said charge.
[Signature and seal of the Magistrate].

[To be substituted for (b) :—]

(2) That you, on or about the day of , at , with the intention of inducing the Honourable A. B., Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such

Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

SCHEDULE V.—(continued).

FORMS—(continued).

(3) That you, being a public servant in the _____ Department, directly accepted from [state the name], for another party [state the name], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 161.

(4) That you, on or about the _____ day of _____, at _____, did [or omitted to do, as the case may be] _____, such conduct being contrary to the provisions of Act _____, section _____, and known by you to be prejudicial to _____, and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 166.

(5) That you, on or about the _____ day of _____, at _____, in the course of the trial of _____, before _____, stated in evidence that "_____" which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 193.

(6) That you, on or about the _____ day of _____, at _____, committed culpable homicide not amounting to murder, by causing the death of _____, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 304.

(7) That you, on or about the _____ day of _____, at _____, abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 306.

(8) That you, on or about the _____ day of _____, at _____, voluntarily caused grievous hurt to _____, and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 325.

(9) That you, on or about the _____ day of _____, at _____, robbed [state the name], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 392.

(10) That you, on or about the _____ day of _____, at _____, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 395.

[In cases tried by Magistrates, substitute "within my cognizance" for "within the cognizance of the Court of Session," and in (c) omit "by the said Court."]

(II).—CHARGES WITH TWO OR MORE HEADS.

(a) I, [name and office of Magistrate, &c.] hereby charge you [name of accused person] as follows :—

(b) *First.*—That you, on or about the _____ day of _____, at _____, knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 241.

Secondly.—That you, on or about the _____ day of _____, at _____, knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

SCHEDULE V.—(continued.)

FORMS—(continued).

(c) And I hereby direct that you be tried by the said Court on the said charge.
[Signature and seal of the Magistrate.]

[To be substituted for (b) :—]

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*.

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*.

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*.

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*.

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*.

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*.

(4) That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that “ ”, and that you, on or about the day of , at , in the course of the trial of before , stated in evidence that “ ”, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session *[or High Court]*.

[In cases tried by Magistrates, substitute “within my cognizance” for “within the cognizance of the Court of Session,” and in (c) omit “by the said Court.”]

(III).—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I, *[name and office of Magistrate, &c.]*, hereby charge you *[name of accused person]* as follows:—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance of the Court of Session *[or { High Court, } as the case may be]*.

And you the said *[name of accused]* stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the *[state Court by which conviction was had]* at of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment

SCHEDULE V.—(continued).

FORMS—(continued.)

for a term of three years, that is to say, the offence of house-breaking by night [*describe the offence in the words used in the section under which the accused was convicted*], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See sections 245 and 258.)

To the Superintendent [*or Keeper*] of the Jail at .

WHEREAS on the day of , 18 , [*name of prisoner*], the [1st, 2nd, 3rd, *as the case may be*] prisoner in case No. of the Calendar for 18 , was convicted before me [*name and official designation*] of the offence of [*mention the offence or offences concisely*] under section [*or sections*] of the Indian Penal Code [*or of Act*], and was sentenced to [*state the punishment fully and distinctly*];

This is to authorize and require you, the said Superintendent [*or Keeper*] to receive the said [*prisoner's name*] into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .
[*Seal.*] [*Signature.*]

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(See section 250.)

To the Superintendent [*or Keeper*] of the Jail at .

WHEREAS [*name and description*] has brought against [*name and description of the accused person*] the complaint that [*mention it concisely*], and the same has been dismissed as frivolous [*or vexatious*], and the order of dismissal awards payment by the said [*name of complainant*] of the sum of rupees as amends; and whereas the said sum has not been paid, and cannot be recovered by distress of the moveable property of the said [*name of complainant*], and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent [*or Keeper*], to receive the said [*name*] into your custody, together with this warrant, and him safely to keep in the said jail, for the said period of [*term of imprisonment*], subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .
[*Seal.*] [*Signature.*]

XXXI.—SUMMONS TO A WITNESS.

(See sections 68 and 252.)

To of .

WHEREAS complaint has been made before me that of has [*or is suspected to have*] committed the offence of [*state the offence concisely, with time and place*], and it appears to me that you are likely to give material evidence for the prosecution;

SCHEDULE V.—(continued).

FORMS—(continued).

You are hereby summoned to appear before this Court on the day of next, at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall, without just excuse, neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18 .
 [Seal.] [Signature.]

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(See section 326.)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of Jurors and Assessors furnished to this Court: you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

[Here enter the names of Jurors and Assessors].

Given under my hand and the seal of the Court, this day of , 18 .
 [Seal.] [Signature.]

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(See section 328.)

To [name] of [place].

PURSUANT to a precept directed to me by the Court of Session of , requiring your attendance as an Assessor [or a Juror] at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at [place] at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of , 18 .
 [Seal.] [Signature.]

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(See section 374.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS at the Session held before me on the day of , 18 , [name of prisoner], the [1st, 2nd, 3rd, as the case may be] prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of

This is to authorize and require you, the said Superintendent [or Keeper], to receive the said [prisoner's name] into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court this day of , 18 .
 [Seal.] [Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 381.)

To the Superintendent [or Keeper] of the Jail at .

WHEREAS [name of prisoner], the [1st, 2nd, 3rd, as the case may be] prisoner in case No. of the Calendar at the Session held before me on the day of , 18 , has been, by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you, the said Superintendent [or Keeper], to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead at [time and place of execution], and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(See sections 381 and 382.)

To the Superintendent [or Keeper] of the Jail at .

WHEREAS at a Session held on the day of , 18 , [name of prisoner], the [1st, 2nd, 3rd, as the case may be] prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas, by the order of the Court of [a duplicate of which is hereunto annexed], the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life [or, as the case may be];

This is to authorize and require you, the said Superintendent [or Keeper], safely to keep the said [prisoner's name] in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(See section 386.)

To [name and designation of the Police-officer or other person or persons who is or are to execute the warrant].

WHEREAS [name and description of the offender] was on the day of 18 , convicted before me of the offence of [mention the offence consisely], and sentenced to pay a fine of rupees , and whereas the said [name], although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said [name] which may be found within the District of ; and, if within [state the number of days or hours allowed] next after such distress the said sum shall not be paid [or forthwith], to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court this day of , 18 .

[Seal.]

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(See section 480.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS at a Court holden before me on this day [name and description of the offender] in the presence [or view] of the Court committed wilful contempt;

And whereas for such contempt the said [name of offender] has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of [state the number of months or days];

This is to authorize and require you, the Superintendent [or Keeper] of the said Jail, to receive the said [name of offender] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [term of imprisonment], unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OR COMMITMENT OF WITNESS REFUSING TO ANSWER.

(See section 485.)

To [name and designation of officer of Court].

WHEREAS [name and description], being summoned [or brought before this Court] as a witness, and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question [or certain questions] put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for [term of detention adjudged];

This is to authorize and require you to take the said [name] into custody, and him safely keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(See section 488.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS [name, description, and address] has been proved before me to be possessed of sufficient means to maintain his wife [name] [or his child [name]], who is, by reason of (state the reason), unable to maintain herself [(or himself)], and to have neglected [or refused] to do so, and an order has been duly made requiring the said [name] to allow to his said wife [or child] for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said [name] in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month [or months] of : And thereupon an order was made adjudging him to undergo simple [or rigorous] imprisonment in the said jail for the period of ;

SCHEDULE V.—(continued).

FORMS—(continued).

This is to authorize and require you, the said Superintendent [or Keeper], to receive the said [name] into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(See section 488.)

To [name and designation of the Police-officer or other person to execute the warrant].

WHEREAS an order has been duly made requiring [name] to allow to his said wife [or child] for maintenance the monthly sum of rupees _____, and whereas the said [name], in wilful disregard of the said order, has failed to pay rupees _____, being the amount of the allowance for the month [or months] of _____;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said [name] which may be found within the district of , and if within [state the number of days or hours allowed] next after such distress the said sum shall not be paid [or forthwith], to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum ; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

[illegible]

XLII.—BOND AND BAIL—BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(See sections 496 and 499.)

I, [name], of [place], being brought before the Magistrate of [as the case may be], charged with the offence of _____, and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary enquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me: and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____.

Dated this day of , 18 .

I hereby declare myself [*or We jointly and severally declare ourselves and each of us*] surety [*or sureties*] for the said [*name*] that he shall attend at the Court of _____ on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself [*or we bind ourselves*] to forfeit to Her Majesty the Queen, Empress of India, the rupees _____.

Dated this day of , 18 .

SCHEDULE V.—(continued).

FORMS—(continued).

XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See section 500.)

To the Superintendent [or Keeper] of the Jail at _____ [or other officer in whose custody the person is].

WHEREAS [name and description of prisoner] was committed to your custody under warrant of this Court, dated the _____ day of _____, and has since with his surety [or sureties], duly executed a bond under section 499 of the Code of Criminal Procedure ;

This is to authorize and require you forthwith to discharge the said [name] from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this _____ day of _____, 18 .

[Seal.]

[Signature.]

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 514.)

To the Police-officer in charge of the Police-station at _____ .

WHEREAS [name, description, and address of person] has failed to appear on [mention the occasion] pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees [the penalty in the bond]; and whereas the said [name of person] has, on due notice to him, failed to pay the said sum, or show any sufficient cause why payment should not be enforced against him.

This is to authorize and require you to attach any moveable property of the said [name] that you may find within the District of _____, by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____, 18 .

[Seal.]

[Signature.]

XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(See section 514.)

To _____ of _____ .

WHEREAS on the _____ day of _____, 18 , you became surety for [name] of [place] that he should appear before this Court on the _____ day of _____, and bound yourself in default thereof to forfeit the sum of rupees _____ to Her Majesty the Queen, Empress of India; and whereas the said [name] has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees _____ ;

You are hereby required to pay the said penalty, or show cause, within _____ days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this _____ day of _____, 18 .

[Seal.]

[Signature.]

SCHEDULE V.—(continued).

FORMS—(continued.)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND
FOR GOOD BEHAVIOUR.

(See section 514.)

To of .

WHEREAS on the day of , 18 , you became surety by a bond for [name] of [place] that he would be of good behaviour for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said [name] has been convicted of the offence of [mention the offence concisely] committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal]. [Signature.]

XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY.

(See section 514.)

To

WHEREAS [name, description, and address] has bound himself as surety for the appearance of [mention the condition of the bond], and the said [name] has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees [the penalty in the bond];

This is to authorize and require you to attach any moveable property of the said [name] which you may find within the District of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to seize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day , 18 .
[Seal.] [Signature.]

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN
ACCUSED PERSON ADMITTED TO BAIL.

(See section 514.)

To the Superintendent [or Keeper] of the Civil Jail at .

WHEREAS [name and description of surety] has bound himself as a surety for the appearance of [state the condition of the bond], and the said [name] has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said [name of surety] has, on due notice to him, failed to pay the said sum, or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for [specify the period];

This is to authorize and require you, the said Superintendent [or Keeper], to receive the said [name] into your custody with this warrant, and him safely to keep in the said Jail for the said [term of imprisonment], and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .
[Seal.] [Signature.]

SCHEDULE V.—(continued).

FORMS—(continued).

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND
TO KEEP THE PEACE.

(See section 514.)

To [name, description, and address].

WHEREAS on the day of , 18 , you entered into a bond not to commit, &c. [as in the bond], and proof of the forfeiture of the same has been given before me and duly recorded ;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 18 .

[Seal.]

[Signature.]

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON
BREACH OF A BOND TO KEEP THE PEACE.

(See section 514.)

To [name and designation of Police-officer] at the Police station of .

WHEREAS [name and description] did, on the day of , 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. [as in the bond], and proof of the forfeiture of the said bond has been given before me and duly recorded ; and whereas notice has been given to the said [name], calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum ;

This is to authorize and require you to attach, by seizure, moveable property belonging to the said [name] to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same ; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND
TO KEEP THE PEACE.

(See section 514.)

To the Superintendent [or Keeper] of the Civil Jail at .

WHEREAS proof has been given before me, and duly recorded, that [name and description] has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said [name] has failed to pay the said sum, or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said [name] in the Civil Jail for the period of [term of imprisonment] ;

This is to authorize and require you, the said Superintendent [or Keeper], of the said Civil Jail to receive the said [name] into your custody together with this warrant, and him safely to keep in the said Jail for the said period of [term of imprisonment] ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

[Seal.]

[Signature.]

SCHEDULE V.—(concluded).

FORMS—(concluded).

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE
OF BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To the Police-officer in charge of the Police-station at .

WHEREAS [name, description, and address] did, on the day of , 18 ,
give security by bond in the sum of rupees for the good behaviour of [name,
&c., of the principal], and proof has been given before me, and duly recorded, of the
commission by the said [name] of the offence of , whereby the said bond has
been forfeited; and whereas notice has been given to the said [name] calling upon him
to show cause why the said sum should not be paid, and he has failed to do so, or to
pay the said sum;

This is to authorize and require you to attach, by seizure, moveable property be-
longing to the said [name] to the value of rupees which you may find within
the District of , and, if the said sum be not paid within , to sell the
property so attached, or so much of it as may be sufficient to realize the same, and
to make return of what you have done under this warrant immediately upon its
execution.

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF
BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To the Superintendent [or Keeper] of the Civil Jail at .

WHEREAS [name, description, and address] did, on the day of , 18 ,
give security by bond in the sum of rupees , for the good behaviour of [name,
&c., of the principal], and proof of the breach of the said bond has been given before
me, and duly recorded, whereby the said [name] has forfeited to Her Majesty the
Queen, Empress of India, the sum of rupees ; and whereas he has failed to
pay the said sum, or to show cause why the said sum should not be paid, although duly
called upon to do so, and payment thereof cannot be enforced by attachment of his
moveable property, and an order has been made for the imprisonment of the said
[name] in the Civil Jail for the period of [term of imprisonment];

This is to authorize and require you, the said Superintendent [or Keeper], to
receive the said [name] into your custody, together with this warrant, and him safely
to keep in the said Jail for the said period of [term of imprisonment]; returning this
warrant within an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

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